This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.

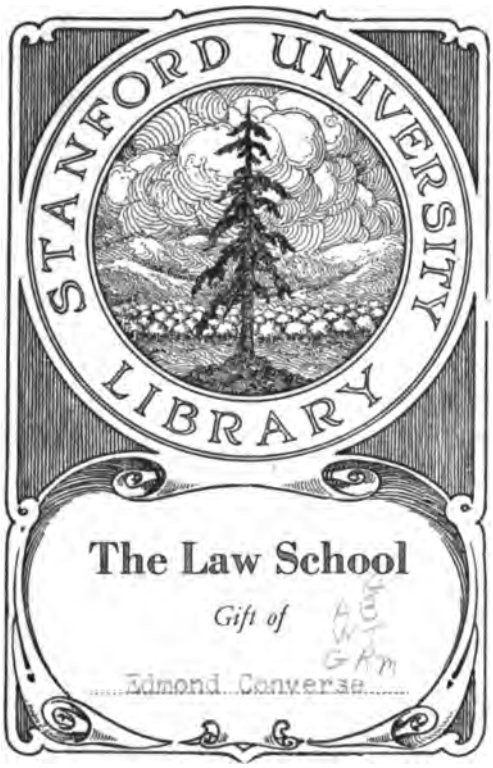
+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.

+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.

+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`


STANFORD UNIVERSITY
LIBRARY
The Law School
Gift of
Edmond Converse

C.5. 11 M 74

MAXIMES OF REASON:

OR,

THE REASON OF THE COMMON LAW OF ENGLAND.

BY

EDMOND WINGATE,

late of *Grayes-Inn*, Esq.

LONDON:

Printed by R. & W. L. for *W. Lee, A. Crook, D. Pakeman, H. Twiford, G. Bedell, T. Dring, J. Place,*

and are to be sold at their Shops.

MDCLVIII.

TO THE READER.

READER,

Am determined, the common Apologies (importunity of Friends, and written first for my privat advantage,) shall have no room in this letter: It is more agreeable to my nature, to acknowledg that these leaves had their Principles and Origination from a meer design of Publick good: if any thing shall appear gratefull, let the intention be incouraged; if there be defects, let Humanity be considered: If there be Errors, let frailty be pardoned: If my Labours may be hints and incitements to persons of larger abilities to expose to the World, the Nobler products of their more improved Reason, in discourses of this Nature, I

ſhall eſteem my ſelf recompenced above the damage of the ſharpeſt cenſure.

It will not be of concernment to offer here my reflections upon the firſt Rudiments of all Common-Wealths; being agreed that ſince our Nature and the Powers of our Souls were degraded in *Adam*; there is an abſolute neceſſity that our Paſſions, and Exorbitancies ſhould be charm'd and confin'd by Politick Combinations, Civil Appointments and Lawes; without theſe the World would be but an *Arena ſine Calce*, a great Bedlam.

Tis without complement to my profeſſion, when I affirm that this Nation was eminently bleſſed with the choiſeſt Compoſures; and had as great a ſhare of wiſdom infuſed into the Fundamental and Architectonical principles, upon which our Government is built, as any Society under Heaven can boaſt of: Obſerve the harmony betwixt the Lawes and the Genius of the people, The Religious ties and ſacred confinements of Royalty, the ſtrict Guards ſet upon propriety, the flouriſhing wealth, and peaceful fruitions of thoſe Eſtates with which our own Virtue or Induſtry, or the be-

benignity of Providence endowed us, all these are to be reckoned as the amiable fruits of those *Sanctions* which the wisdom of our Fore-fathers transmitted to us.

Now all Lawes that are Just and Prudent, ought to be viewed as *Radii* and *Effluxes* from the Eternal Wisdome, having their Exemplar Cause and bright *Idea* in God himself: The mediate Author of these is humane Reason, exalted and purified by Learning and Experience, and enlightned by the Divine Spirit; I presume there is no fear of Sosinians in Law, and that attempts may be made without danger, to discover how the vast multitude of Cases, that Follies, or Passions, or Necessities of men have obliged us to be acquainted with, are all accountable and reducible to some few Theses; which being prime Emanations and Grand Maximes of Reason, govern and resolve the subordinate Miscellanie of queries, and may serve for a Clue and Conduct, through the Labyrinth of that perplext variety; Saving us the labour of Charging our Memories with every particular, which in the result, is lesse apt to profit, then to burden and confound us.

I do not despaire but that every Student who

who ſeriouſly intends to become his Gown, ſhall find ſome ſatisfaction in noting the ſame Key to open ſo many Locks; when he ſees ſuch a number of Caſes obeying, one ruling Axiome, atteſting its Supremacy, as they are ſtrung upon the thread of the ſame Reaſon: But whatever the ſucceſſe be, if my Lord *Verulam* ſpeaks true, that it deſerves praiſe to make wiſhes that are not abſurd, it will eaſily be granted, that when ſuch Wiſhes are purſued vvith endeavours, if they merit nothing elſe, they may certainly lay claime to pardon.

EDMOND WINGATE.

An Advertiſement to the Reader.

COURTEOUS READER,

BE pleaſed to mend with thy pen the numbers of ſome pages in this Book; namely, from folio 192, *to folio* 325, *and then will the Table at the end of this Book exactly agree with the printed pages, which otherwiſe in thoſe folio's will be ſhort.*

THE ORDER

Of the Maximes of Reason;

Or the Reason of the

COMMON LAW

OF

ENGLAND.

I. *Summa ratio est, quæ pro Religione facit.* It is the highest Reason that makes for Religion, *Maximes, fol. 1* viz.

II. *Nunquam prospere succedunt res Humanæ, ubi negliguntur Divinæ.* Humane Laws never succeed well, where Divine Rites are neglected, *From Theology.* 6

III. To such Laws as have Warrant in holy Scripture, our Law giveth credence, *& e contr.* 6

IV. The Jurisdiction of the Ecclesiasticall Law, ought to be bounded by the Common Law, 7

V. *Dies Dominicus, non est juridicus,* 7

VI. *Gravius est divinam, quam Temporalem ledere Majestatem,* 8

VII. The Law disavoureth an Excommunicate person, 9

VIII. The Rules from Grammar are infinite, in the Etymology of words, and in the construction of them; what their nature is single, what joyned with others, *&c.* *From Grammar.* 11

IX. *In conjunctivis oportet utrumque in disjunctivis sufficit alterum partium esse verum,* 13

X. Words in Construction must be referred to the next Antecedent, where the matter it self doth not hinder it, 15

XI. The Law delighteth in apt Expressions, 16

XII. *Nomina si nescis, perit cognitio rerum,* 18

XIII. *Mala Grammatica, non vitiat chartam,* 18

XIV. *Qui hæret in litera hæret in Cortice,* 19

XV. *Talis interpretatio fienda est, ut evitetur inconveniens & inconveniens, & ne judicium sit illusorium,* 21

XVI. *Quoties in verbis nulla est ambiguitas, ibi nulla expositio contra verba expressa fienda est,* 24

XVII. *Maledicta expositio est, quæ corrumpit textum,* 26

XVIII. *Nimia subtilitas in lege reprobatur,* 26

From Logick. XIX. XX. XX

ſtante cauſa, ceſſat effectus, 29
Remoto impedimento, emergit actio, & e contr. 38
XXI. Things are conſtrued according to that which was the cauſe thereof 41
XXII. *Cujus eſt dare, ejus eſt diſponere* 53
XXIII. *Ultra poſſe, non eſt Eſſe, & vice verſa* 54
XXIV. *Nemo poteſt plus juris ad alium transferre quam ipſe habet* 56
XXV. Things are conſtrued according to that which was the beginning of them 62
XXVI. *Derivata Poteſtas, non poteſt eſſe major primitiva* 66
XXVII. *Unam quodque Diſſolvitur eo modo, quo Colligatum eſt : Nihil tam conveniens naturali aquitati, unumquodque diſſolvi eo ligamine quo ligatum eſt* 68
XXVIII. Things grounded upon an evill void beginning, cannot have good perfection 72
XXIX. *Quod non habet Principium, non habet finem* 79
XXX. He that claimeth Paramont a thing, ſhall never take benefit, nor hurt by it 79
XXXI. Things are to be Conſtrued, *ſecundam ſubjectam materiam* 85
XXXII. According to the End 91
XXXIII. *Qui adimit medium, dirimit finem* 94
XXXIV. According to the effect 96
XXXV. He that cannot have, or performe the effect or conſequence of a thing, ſhall not have the thing it ſelfe 104
XXXVI. *Non officit Conatus, niſi ſequatur effectus* 107
XXXVII. *Acta exteriora, indicant interiora ſecreta* 108
XXXVIII. *Inutilis Labor, & ſine fructa, non eſt effectus Legis, & e contr.* 110
XXXIX. *Lex non Præcipit inutilia* 112
LX. *Debile Fundamentum fallit opus, & e contr.* 113
LXI. Things incident are adherent to their Superiors or Principalls 127
LXII. *Quod tacite intelligitur, de eſſe non videtur* 137
LXIII. Things by reaſon of another, are in the ſame plight 141

From perſonall things.
LXIV. Perſonall things, cannot be done by another 150
LXV. They cannot be granted, or transferred over as matters of pleaſure, eaſe, truſt, and authority 153
LXVI. They being once ſuſpended, or diſcharged for a time, are for ever after Extinct 154
LXVII. They dye with the perſon 155
LXVIII. Things do enure diverſly according to the diverſity of the time 157
LXIX. *Quod prius eſt tempore, potius eſt jure* 159
L. According to the diverſity of the ſame perſon 160
LI. According to the diverſity of ſeverall perſons 162
LII. Relation, is of great force in Law 165
LIII. *Verba poſteriora propter certitudinem addita, ad priora, quæ*

quæ rectitudini indigent, sunt referenda, 167
LIV. No man can do an Act to himself, 168
LV. The Law favoureth Privity, 172
LVI. Equall things cannot drown one another, *& e contra,* 190
LVII. Things are to be construed, *secundum æqualitatem rationis,* 190
LVIII. *In quo quis deliquit, in eo de jure, est puniendus,* 202
LIX. *Omne Majus Continet in se minus.* 206
LX. *Additio probat minoritatem,* 211
LXI. A matter of higher nature determineth a matter of lower nature, *& e contra,* 212
LXII. The more worthy thing draweth unto it things of less worthiness, 215
LXIII. *Accessarium sequitur Principale,* 218
LXIV. Things accessary are of the nature of the Principall, 226
LXV. A mans one words are void, when the Law speaketh as much, or otherwise, 231
LXVI. *Expressio eorum quæ tacite in sunt, nihil operatur,* 235
LXVIJ. *Parte quacunque integrante sublatâ, tollitur totum,* 236
LXVIJJ. *Ex tota materia, emergat Resolutio,* 238
LXJX. *Partes simul sumptæ componant totum: & totum comprehendit suas partes,* 241
LXX. Intire things cannot be severed, 242
LXXI. *Argumentum a Divisione, est fortissimum in lege,* 260
LXXII. Generalls must go before, and the specialls must follow after, 261
LXXIII. The more worthy shall be set before the lesser worthy, 261
LXIV. *Sicut natura non facit saltum, Ita nec Lex,* 263
LXXV. *A digniori fieri debet Denominatio, & Resolutio,* 265
LXXVI. The Law requireth decency and order, 267
LXXVII. *Negatio Conclusionis, est Error in Lege,* 268
LXXVIII. The Law respecteth the Bonds of Nature, 268
LXXIX. *Nemo præsumitur alienam posteritatem suæ prætulisse,* 285

LXXX. The Law esteemeth and judgeth of all things according to their nature and quality, 286 *The Law.*
LXXXI. In persons, the Law looketh at the Excellency of some, and giveth them singular priviledges above others, as to the King, Queen, Noble men, and Peers of the Realm, *&c.* 292
LXXXII. The Law giveth greater priviledges to men, then to women, 313. and,
LXXXIII. It tendreth the weakness and disability of other persons, as of those out of the Realme, Feme Coverts, Enfants, *&c.* 313
LXXXIV. It tendreth the ignorance of men unlettered, 322
LXXXV. It favoureth strangers, that are neither parties, nor privies, 323
LXXXVI. *Res inter alios acta, alteri nocere non debet, sed quandoque prodesse potest,* 327
LXXXVII. *Nemo punitur pro alieno delicto,* 336
LXXXVIII. The Law favoureth things done in anothers right, 338

LXXXIX. It disfavoureth other persons, as Villains, Outlawes, Exiles, Aliens, and especially Aliens Enemies, 343
XC. How the Law tendreth Ages, 348
XCI. The Law in things, respecteth every thing according to worthinesse, 250

The Law. XCII. It respecteth life and liberty most, and the person above the possessions, 353
XCIII. it respecteth things in the realty, more then those in the personalty, 359
XCIV. It respecteth Freehold and Inheritance more then it doth Chattels, 362
XCV. It respecteth matters of Record more then other transactions, 368
XCVI. It respecteth Conveyances by Livery, and which pass Estates of the land, then those that pass by Grant, or are belonging to, or issuing out of land, 371
XCVII. It favoureth a matter in the right more then a matter in possession, 373. yet
XCVIII. It favoureth possession where the right is equall, 375
XCIX. It respecteth matters of profit and Interest largely, of pleasure, skill, trust, authority, and limitation strictly, 376. and
C. Therefore these may be Countermandants, so cannot those, 381
CI. It respecteth matter of substance more then matter of circumstance, 382 yet
CII. For memory and solemnity, substances are to be exprest under circumstances. 393
CIII. It respecteth things executed and done more, then Executory, and to do, *&c.* 395
CIV. Possibility of things, 403. and
CV. Therefore nothing to be void, which by possibility may be made good, 406
CVI. *Id certum est, quod certum reddi potest,* 408
CVII. *Res non per se invicem, sed per pecuniam estimantur, & non pecunia, per res,* 411

The Law. CVIII. It favoureth mutuall recompence, 411
CIX. *De minimis non Curat Lex,* 418
CX. It yeildeth favour in actions when there is no damage of them, 1. Necessity, 420
CXI. 2. Conveniency, 428
CXII. 3. Conformity, 429
CXIII. 4. Colour, 431
CXIV. It prizeth the Acts of God and of the Law, more then those done by the party, 432
CXV. *Utique fortior, est dispositio Legis, quam hominis,* 446
CXVI. It reputeth that a man will deal for his own advantage best, 153 and
CXVII. Therefore it beleiveth against the party whatsoever is to his prejudice, 459
CXVIII. When severall remedies are given, the party to whom the Law giveth them hath election which he will take, 473

CXIX. *Cujus*

CXIX. *Cujus eſt diviſio, alterius eſt Electio,* 478
CXX. *Nemo prohibetur pluribus defenſionibus uti,* 479
CXXI. *Conſenſus tollit Errorem,* 481
CXXII. *Volenti non fit injuria,* 482
CXXIII. *Quilibet poteſt renunciare juri, per ſe introducto,* 483
CXIV. *Omnis Ratihabitio retro-trahitur, & mandato ſeu licentia æquiparatur,* 485
CXXV. *Nemo tenetur accuſare ſeipſum,* 486
CXXVI. *Nec ſe infortuniis, & periculis exponere,* 487
CXXVII. Countenanceth things done more in the time of Peace, then in the time of War, 487 *The Law.*
CXXVIII. It countenanceth things done in the day, more then in the night, 488

CXXIX. 1. Sometimes a whole day is ſufficient 481
CXXX. 2. Sometimes a whole yeare, 489
CXXXI. 3. Sometimes to the laſt part of the day, 490
CXXXII. 4. When no time is limited, the Law appointeth the moſt convenient time, 491 *Things are to be ſtraightned according to the nature of them.*
CXXXIII. The third Offence is eſteemed moſt heynous, 494
CXXXIV. The place ought to be convenient, 494

CXXXV. The Law favoureth Charity, 497
CXXXVI. *De mortuis nil niſi bonum,* 498 *Maximes, Taken out of Morality.*

CXXXVII. It hateth malice and oppreſſion, 499 *The Law.*
CXXXIX. It hateth Vice, 499
CXL. *Intereſt Reipublica, ne maleficia remaneant impunita,* 501
CXLI. It favoureth Juſtice and Right, 502
CXLII. That which is not tortious in it ſelf, cannot be tortious to any, 508
CXLIII. *Interſt Reipublicæ ne Curia Domini Regis, deficeret in Juſtitia,* 545
CXLIV. It favoureth common Right, 547 *Law.*
CXLV. It ſuffereth things againſt Principles of Law, rather then the party be without remedy, 549
CXLVI. It hateth wrong, 563 ſo as
CXLVII. None ſhall take benefit or advantage of their own wrong, 568
CXLVIII. The Law of it ſelf prejudiceth no man, 575
CXLIX. Eſpecially for things which cannot be imputed to their owne folly or neglect, 581
CL. *Nemo debet rem ſuam ſine facto, vel defectu ſuo amittere,* 592
CLI. It driveth not a man to ſhew, take notice of, or do that which by intendment he knows not, or ſhould, or cannot do, 593
CLII. Nor to do that which were in vain for him to do, 600
CLIII. *Non licet, quod diſpendio licet,* 603
CLIV. It favoureth truth, faith, and certainty, 604 *Laws.*
CLV. It diſfavoureth impoſſibilities, 606
CLVI. *Non cogit ad Impoſſibilia, & Impotentia excuſat Legem,* 609
CLVII. It diſfavoureth falſehood, fraud, and covin, 670
CLVIII. *Jus, & fraus, nunquam cohabitant,* 680
CLIX. *Quando aliquid prohibetur fieri, ex directo prohibetur, & per obliquum,*

CLX. *Rectum eſt Index ſui, & obliqui,* 620
CLXI. It diſfavoureth Improbabilities, 620
CLXII. It diſfavoureth Incertainties, by the which the truth may be inveighed, 621
CLXIII. *Perſonalitas non concludit, nec ligat,* 634
CLXIV. *Generale, nihil certi implicat,* 635
CLXV. *Doloſus verſatur in generalibus,* 636
CLXVI. 1. Variance, 636
CLXVII. 2. Contrariety and Repugnancy, 638. and therefore
CLXVIII. 3. It will not drive a man to juſtifie or ſhew that which he goeth about to defeat, or makes againſt him, 646
CLXIX. *Non poteſt adduci exceptio ejuſdem rei, cujus petitur diſſolutio,* 647
CLXX. None ſhall take exception to an Error, or Act, which operateth to his own advantage, 648
CLXXI. *Nemo tenetur armare adverſarium ſuum contra ſe,* 665
CLXXII. It favoureth diligence, and therefore hateth folly and negligence, 665
CLXXIII. *Negligentia ſemper habet infortunium Comitem,* 669
CLXXIV. *Vigilantibus non Dormientibus Leges ſubveniant,* 672
CLXXV. It favoureth ſpeedying of mens Cauſes, 673
CLXXVI. It hateth Delaies, 674
CLXXVII. It hateth unneceſſary Circumſtances: And *Fruſtra fit per plura, quod fieri poteſt per pauciora,* 675
CLXXVIII. *Expedit Reipublicæ, ut ſit finis Litium* 676
CLXXIX. Circuit of Action 680
CLXXX. Matter of Vexation 680
CLXXXI. *Pendente Lite, nihil innovetur* 681
CLXXXII. Unfitneſſe, and multiplicity of Suits 682
The Law. CLXXXIII. It conſtrueth things with equity and moderation 685
CLXXXIV. It reſtraineth a generall Act, or Rule, and ſometimes a particular Contract, if it be miſcheivous or inconvenient 687
CLXXXV. *Nemo bis punitur, pro eodem relicto* 695
CLXXXVI. It flyeth, and preventeth all occaſions of Evill 696
CLXXXVII. It moderateth the ſtrickneſſe of the Law it ſelfe 702
CLXXXVIII. *Verba ſemper accipienda ſunt in mitiori ſenſu,* 705
CLXXXIX. It conſtrueth things according to common poſſibility or Intendment 707
CXC. *Stabit Preſumptio donec probetur in Contrarium* 712
CXCI. *Ad ea quæ frequentius accidunt, jura adaptantur* 716
CXCII. *Frequentia Actus multum operatur,* 719
CXCIII. It alwaies conſtrueth things to the beſt, 720
CXCIV. Every Act to be lawfull when it ſtandeth indifferent, whether it ſhould be lawfull or not, 722
CXCV. *Non præſtat impedimentum, quod de jure non ſortitur effectum,* 727
CXCVI. *Prætextu liciti non debet admitti illicitum,* 728
The Law. CXCVII. It favoureth things for the Common-wealth, 729
CXCVIII. It favoureth publick Commerce, 738
CXCIX. It favoureth Honour and Order, 739
CC. It favoureth publick quiet, 742
CCI. *Conventio, ſeu beneficium privatorum non poteſt publico juri derogare,* 746

Minime

CCII. *Minime mutanda sunt, quæ certam habuerunt Interpretationem,* 748
CCIII. *A Communi observantia, non est recedendum,* 752
CCIV, *Eventus varius res nova semper habit,* And therefore it hath new Inventions and Innovations, 756
CCV. *Communis Error, facit jus,* 758
CCVI. So doth a Custome which is reasonable : unreasonable *e contr,* 758
CCVII. *Licet consuetudo sit magna Authoritatis, nunquam tamen præjudicat manifestæ veritati,* 762

CCVIII. The Husband and Wife are one person in Law, 763 *Wife.*
CCIX. The wife is of the same condition with her husband, 764
CCX. They cannot sue one another, or make any Grant one to another, or the like, 765
CCXI. Upon a joynt Purchase during the Coverture, either of them taketh the whole, 766
CCXII. The husband is the womans head, 767
CCXIIJ. All that she hath is her husbands, 768
CCXIV. Her will ought to become his will, and to be subject unto it, 770

CCLXIV. [illegible] 763
CCLXV. [illegible] 764
CCLXVI. [illegible] 765
CCLXVII. [illegible] 766
CCLXVIII. [illegible] 767
CCLXIX. [illegible] 768
CCLXX. [illegible] 769
CCLXXI. [illegible] 770
CCLXXII. [illegible] 771
CCLXXIII. [illegible] 772
CCLXXIV. [illegible] 773
CCLXXV. [illegible] 774
CCLXXVI. [illegible] 775
CCLXXVII. [illegible] 776
CCLXXVIII. [illegible] 777

Maxims.

Maximes of Reaſon:

OR,

THE REASON OF THE COMMON LAW OF ENGLAND.

Lawes are divided into Native and Poſitive.

Native are ſuch Lawes as are in us of themſelves, and are therefore unchangeable and not to be abrogated: Theſe are likewiſe twofold, viz. The law of Nature, and the Law of Reaſon.

The Law of Nature is that Law, which God at the time of the Creation of ỹ nature of man infuſed into his heart for his preſervation and direction: This is that Law, which is called Lex æterna or the Moral Law, & adminiſtreth common principles of good and evil, as That men ſhould live peaceably together; That we ſhould not do that to another, which we would not have another do to us; *ſuum cuiq; tribuere*; That Juſtice ſhould be duly adminiſtred to all, and the like: This was termed by the Ancient Philoſophers Original Juſtice, which in Adams innocencie was cléere and lightſome, but ſince his fall (both in himſelfe and his poſteritie) much darkened and incumbred with originall ſinne. This is alſo the Law, whereof Saint Paul makes mention in his Epiſtle to the Romans, where he ſaith, When the Gentiles, which have not the Law, do by nature the things contained in the Law; Theſe, having not the Law, are a Law unto themſelves, which ſhew the work of the Law written in their

Co. l. 7. 12. b. in *Calvins* caſe. Doct. & Stud. l. 1. cap. 1.

Rom. 2. 14, 15.

hearts,

hearts, their conſcience alſo bearing witneſſe, and their thoughts in the mean while accuſing or excuſing one another.

The Law of Reaſon is that Law, which deduceth concluſions from known Principles by ratiocination or diſcourſe of ſome reaſon, which Principles are termed Rules or Maximes of Reaſon.

Poſitive Lawes are ſuch Lawes, as are framed by the light of the two former, for the regular Government of ſome particular Common wealth; And therefore theſe Lawes are ſundry and divers according to the ſeveral conſtitutions of particular places and Countries; of this ſort is the Common Law of England, which being the Principal Law of this Nation, and receiving its light (principally) from the Law of Reaſon, is many times directed and controuled by the Rules and Maximes thereof: Now of theſe Maximes, ſome are taken out of forreigne Sciences, as Theologie, Grammar, Logique, Phyſiques, Moral Philoſophy, Politicks and Oeconomiques; The reſt are proper to the Law it ſelf, as Law-conſtructions and Fictions in Law; All which will more plainly appear by the Precepts and Examples hereafter following.

Max-

I Maximes of Reaſon taken out of THEOLOGIE.

1 Summa Ratio eſt, quæ pro Religione facit. *It is the highe Reaſon that makes for* Religion.

Statutes which reſtrain Alienation of Eccleſiaſtical livings, binde the King. though not named.

1 REgularly Statutes binde not the King, unleſſe he be particularly named, yet the King is included within the generall words of 13 El. 10, which prohibit Eccleſiaſticall perſons to make grants of their Livings; becauſe the Parliament which made that Statute, adjudged ſuch grants to be cauſes of dilapidations, and decay of ſpirituall livings, and hoſpitality, and of the utter impoveriſhment of ſucceſſors, Incumbents in the ſame; whereupon would neceſſarily follow decay of true Religion, and the ſpirituall worſhip of God: For it is recorded in Hiſtory, that amongſt the ten Perſecutions, which the Primitive Church ſuffered, there were two the moſt grievous, the one under Diocleſian, the other under Julian the Apoſtate, the firſt endeavoured to deſtroy all the Profeſſors and Preachers of the Word of God (occidit omnes Presbyteros) but notwithſtanding that Religion ſtill flouriſhed (for ſanguis Martyrum eſt ſemen Eccleſiæ) yet that was a grievous Perſecution: But the Perſecution under the other (viz. Julian) was much more grievous and dangerous, becauſe (as the Hiſtory ſaith) occidit Presbyterium; for it robbed the Church, and ſpoiled ſpirituall perſons of their revenues; And thereupon enſues great ignorance in Religion, and the ſervice of God, and therefore great decay of the Chriſtian profeſſion; for none will apply himſelfe, or his children, or any other committed to his charge, to the ſtudy of Divinity, when after long and painfull ſtudy they ſhall have nothing to live upon. See more in the Books at large. Co. l. 8. 14. a. In the caſe of Eccleſiaſtical perſons. Co. l. 11. 70. a. *Magdalen Colledge* Caſe. Co. l. 2. 44. b. In the Biſhop of *Wincheſter's* Caſe.

Eccleſiaſtical livings are in Abeyance.

2 The Fee ſimple of a Parſonage or Vicarage is ſaid to be in Abeyance, and this was provided by the providence and wiſdom of the Law; for that the Parſon and Vicar have curam animarum, and were bound to celebrate Divine Service, and adminiſter the Sacraments, and therefore no act of the predeceſſor ſhould make a diſcontinuance to take Co. Inſt. *parte* 1 341. a.

away the entry of the ſucceſſor, and to drive him to a reall action, whereby he ſhould be deſtitute of maintenance in the mean time.

Co. *ibid.* 3 Upon conſideration of all the Books of the Law, this diverſity is well obſerved by Sir Edw. Cooke, that a Parſon or Vicar for the benefit of the Church, and his ſucceſſor, is in ſome caſes eſteemed in Law to have a Fee ſimple qualified; But to do any thing to the prejudice of his ſucceſſor in many caſes the Law enjoyneth him to have in effect but an eſtate for life. Cauſæ Eccleſiæ publicis cauſis æquiparantur, And Eccleſia ſuſcipitur vice minoris; melioremque facere poteſt conditionem ſuam, deteriorem nequaquam. *Vide Co. Inſt. pars* 1, 2. *b.* 4.

Eccleſiaſtical perſons cannot injure the Church.

Bract. f. 226. Brit. 143.

Littl. §. 146. Co. Inſt. pars 1. 102. b. 40 E. 3. 27. 5 E. 4. 8. 6 E. 3 51, 52. 10 E. 4. 2. a. 21 H. 7. 10.

4 An Abbot, Prior, Biſhop, Dean, Arch-deacon, Prebend, Parſon, Vicar, or other ſole Corporation, that is ſeiſed in autet droit, cannot diſclaim, becauſe they alone cannot deveſt any fee, which is veſted in their houſe or Church: For an Abbot and Prior had their Convent, the Biſhop his Chapter, the Parſon and Vicar their Patron and Ordinary, and the like of other ſole Corporations, without whoſe aſſent they could paſſe away no Inheritance. And the reaſon of this was, becauſe the wiſdome of the Law would never ſuffer one ſole perſon to be truſted with the diſpoſition of the Inheritance of his houſe or Church. Eccleſiæ ſuæ conditionem meliorem facere poſſunt ſine conſenſu, deteriorem non poſſunt ſine conſenſu. Vide infra Max. 178. Pl. 1.

Eccleſiaſtical perſons cannot diſclaim.

Co. l. 6. 49. b. *Boſwels* Caſe. Co. Inſt. pars 1 344. a. Glan. l. 13. cap. 18, 19, 20. Mirror c. 5. § 5. Bract. 238. 240, 244, &c. 291. Fleta l. 83. c. 11, 16, 17. Britt. 222, 223, 224. 6 E 3. 28. 39. 52. 39 E. 3. 24. 43 E. 3. 25. 45 E. 3. Quare impedit. 39. 31 E. 1. Quare impedit. 186.

5 By the Common Law there ought to be in every Parith Perſona idonea to ſerve the Cure; for ſo it appears by the words of the Quare impedit, quod permittat præſentare idoneam perſonam, which Epithete idonea includes abilitie in erudition and doctrine, honeſty in his converſation, and diligence in his function, and all this to inſtruct the People of God in true Religion, and good converſation, and to avoid contention: And to the intent that he, who hath ſo great a charge, may effectually and peaceably intend it, the Common Law provides, that after Inſtitution he ſhall not be ſubject to actions, and ſo neglect his duty by loſing his time in ſuits and vexations of Law: And therefore (at the Common Law) if a ſtranger had preſented his Clerke, and he had been admitted and inſtituted to a Church, whereof any ſubject had been lawful Patron, the Patron in that caſe had no other remedie to recover his Advowſon, but by a writ of right of Advowſon wherein nevertheleſſe the Incumbent was not to be removed: And ſo it was alſo (at the Common Law) if an uſurpation had been had upon an Infant or a feme covert, having an Advowſon by deſcent, or upon tenant for life, &c. the Infant, feme covert, and he in the reverſion were driven to their writ of right of Advowſon: for (at the Common Law) if the Church were once full, the Incumbent could not be removed; And plenarty generally was a good plea in a Quare impedit, or an Aſſize of Darrein preſentment: And the reaſon of all this was, to the intent that the Incumbent might quietly intend and apply himſelfe to his ſpiritual charge: Howbeit (at the Common Law alſo) if any had uſurped upon the King, and his preſentee had been admitted, inſtituted, and inducted (for without induction the Church had not been full againſt the King, the King might have removed him by Quare impedit, and been reſtored to his Preſentation; for therein he hath a prerogative, Quod nullum tempus occurrit Regi; nevertheleſſe (in that caſe alſo) he could not preſent, for the plenarty barred him of that, neither could he remove him any way but by Action, to the end the Church might be the more quiet in the meane time, neither yet did the King recover damages in his Quare impedit at the Common Law. But now the Statute of Weſtm. 2. cap. 5. hath altered the Common Law in theſe caſes. And by that Statute the King is bound, though

The Parſon or Vicar ought to be *Perſona idonea.*

Not to be removed after inſtitution by a common perſon, nor after induction by the King.

F. N. Br. 36. k. 143. a. Stat. 35. E. 3. 3. 13. R. 2. 1. 4 H. 4. 21.

though not named, because it concerns the Church and Religion. 35 H. 8. 60.

A Juris utrum taken against one tenant.

6 Where a Juris utrum is brought against several tenants by several summons in the writ, it may be taken against one tenant onely, for that parcel, and after against the others; but it is otherwise in an Assize of Novel disseisin, if it be not in some special case. F.N.Br. 50.m.

In a Quare Impedit, a Non-suit peremptory.

7 In a Quare impedit if the Plaintiff be non-suit after appearance, the defendant shall make title, and have a writ to the Bishop; and this is peremptorie to the Plaintiffe, and is also a good barre in another Quare impedit: and the reason of this is, for that in this case the defendant (in favorem Ecclesiæ) hath the said writ by judgement of the Court; And therefore the Incumbent, that cometh in by that writ upon such non-suit, shall never be removed, that being a flat barre as to that presentation: And the same Law and for the same reason it is in case of a discontinuance, &c. Co. Inst. pars 1 139 a.

A generall accusation against a Parson or Vicar not good.

8 In a Quare impedit against the Bishop it is not a good plea to alledge, that the presentee is a notorious malefactor in generall, but he ought to expresse his crime in particular, because it concerning the cure of souls is traversable, and requireth more care and circumspection: It is otherwise for the putting a Coroner out of his office; for there a generall suggestion in the writ, that he is persona minus idonea, is enough, and not traversable. But the reason is, because this is but the keeper of the Rolles of the Crowne; the other hath the cure and guard of souls. Co. l. 5. 58 b. *Specots* case.

Intire services remains after purchase of part by the Lord.

9 There is a diversitie concerning intire services to be reduced to the Lord, as a spurre, hose, or the like; for when they accrue to the sole benefit of the Lord, and to the charge of the tenant, if the Lord purchase part of the land, the whole service is thereby extinct: But when such intire services are reserved for works of devotion, piety, or charity, as to marry a poor virgin yearly (as you have it in 24 H. 8. Br. tenures 53) or to find a Preacher in such a Church, or to provide ornaments for such a Church (which tenure is in 35 H. 6. 6. In such case, albeit the Lord purchase part, yet the intire service remaines. Co. l. 6. 1. b. in *Bruertons* case. Co. Inst. pars 2. 149. a.

Protection.

10 A spiritual person shall have a protection cum clausula nolumus to protect him, his goods, his farmers, and their goods from the Kings purveyors and carriages. See the Stat. of 14 E. 3. Co. Inst. pars 1 132. b.

Priviledge of Clergie.

11 Before the Statute de articulis cleri cap. 15. he that confessed the felonie could not have the priviledge of Clergie, because he could not make his purgation; And although the Statute speakes onely of Abjuration, and of an Approver, yet the Judges (in favorem Ecclesiæ) extend it to all other confessions upon the Arraignement of the offender. Co. l. 11. 29. b. *Alex. Fowlers* case.

Tithes not extinct by unity of possession.

12 If the Parson of a Church purchase a Manor within his Parish, here, by this purchase and unity of possession, the Manor, which was tithable before, is now made non decimabilis, because he cannot pay tithes to himself: but if the Parson make a lease of his Parsonage and Rectorie for a stranger; in this case, the Parson himselfe shall pay tithes of his Manor to the Lessee of the Rectorie, or if the Parson make lease of the Manor, the lessee shall pay tithes to the lessor being Parson, because tithes cannot be extinct by any unity of possession as rent charge may, which is issuing out of land: but tithes are due by the Law of God ex debito, for the manurance and tillage of the occupier, in whosoever hands the land comes, unless it be in the hands of the Parson himselfe: And therefore if the Parson let part of his Glebe land for yeares or life reserving rent, the lessee shall pay the Parson tithes, because they are due of common right. vide 32. dismes 17. Dyer 43. p. 21. 30 H. 8.

2 Nun-

2 Nunquam proſperè ſuccedunt res Humanæ, ubi negliguntur Divinæ. *Humane Affairs never ſucceed well, where Divine Rites are neglected.*

Co.Inſt.pars 1 246.a.1. 1 Laches ſhall not prejudice an Infant in point of deſcent, &c. but it ſhall be adjudged in him if he preſent not to a Church within ſix moneths; for the law reſpecteth more the privilege of the Church (that the Cure may be ſerved) than the privilege of Infancy. Laches ſhall prejudice an Infant.

F.N.Br.160. c.d. 2 Men of Religion ought not to appeare at the Sheriffes turnes, nor the leet of any other without great cauſe, and if they be diſtrained to come to them they may have a writ out of the Chancery for their diſcharge: All other clerks alſo within orders (though not benefices) have the like privilege: And the reaſon of this is, to the end they ſhould attend their function. Clergy men not ſubject to perſonal charges.

Co.l.11.70.b. in *Madg.* Col. caſe. M.10 H.6.8. 3 I. S. brings an action of debt againſt I. Rector of T. in com. B. the defendant ſaith, that before the day of the writ purchaſed he dwelt at B. in com. N. Et non allocatur; for a Parſon ſhall be intended by Law to be always reſident upon his benefice for the cure of ſouls, which he hath there, and the Parſon, who hath cure of ſouls and is a non-reſident, non eſt diſpenſator ſed diſſipator, non ſpeculator ſed ſpiculator; And therefore no ſuch thing ſhall be preſumed. A Parſon ought to be reſident.

F.N.Br,175. 4 A Parſon to the end he may give his continual attendance upon that ſacred function, is freed from all perſonal charges, that may hinder him in his calling: And therefore he ſhall not be choſen Baſliffe, Réeve, Beadle, or other officer for land annexed to his Church; And all this by the courſe of the Common Law: for the ſame reaſon it is, that if a Parſon have a Parſonage, and after take another benefice without a diſpenſation, the firſt benefice is voide, and the Patron thereof may preſent; for this avoydance is called a Ceſſion, because the taking of the laſt makes him neglect the firſt. The like.

F.N.Br.34.l.

F.N.Br.175. Br. Diſmes 16 5 To the end that Religion may not be neglected, but preſerved and daily increaſed the Common Law giveth to the Parſon (of common right) the tenth of all manner of yearely encreaſe, which are called Diſmes, or Tithes, the due payment whereof tendeth much to the continuance and eſtabliſhment of the true Religion, and the due worſhip of God; And therefore albeit a meere lay man may preſcribe in modo decimandi, yet he cannot ſo doe in non decimando; becauſe he is but in ſpecial caſes capable of tithes at the Common Law; and therefore without ſpecial matter ſhewed it ſhall not be intended, that he hath any lawful diſcharge; And for this cauſe in favour of holy Church (although it may have lawfull commencement) the law will not ſuffer ſuch preſcription in that caſe, nor put it to the trial of lay men, who will perhaps rather ſtrain their conſciences for their private benefit, than give the Church the duties, that belong to her. Vide infra 186. 11. Tithes due onely to the Parſon of common right.

Co.l.2.44.b. The Biſhop of *winchesters* caſe.

Co.l.5.63.a. 44 E.3.19. 6 The Inhabitants of a Town (without any cuſtome) may make ordinances or by-laws for reparation of the Church, and in that caſe the greater part ſhall binde all the reſt without any Cuſtom. The Chamberlain of Londons caſe. By-Lawes.

Priſot. 3 To ſuch Lawes as have warrant in holy Scripture, our Law giveth credence, *& contra.*

Co.Inſt.pars 1 128. b. 1 In the raigne of King Alfred, and untill a good while after the Conqueſt no man could have been out-lawed but for felonie, and then the out-lawed perſon was ſaid to have Caput Lupinum, becauſe he might be put to death by any man, as a Wolfe that hateful beaſt might; and in ancient Outlawed perſons had *capita Lupina.*

ancient time the head of either of them being brought to the chiefe place of the County or Franchise where they were killed, the partie so killing them was to have a Mark for his paines: Howbeit in the beginning of the raigne of E. 3. it was resolved by the Iudges (for avoiding of inhumanitie and effusion of Christian blood) that it should not be lawfull for any man, but the Sheriffe only (and that upon lawfull warrant) to put to death any out-lawed person, though it were for felonie, in pain to suffer death, as in case of killing another man.

One attainted of a *Præmunire*. 2 It was lawfull for any man to put to death a man attainted of a Præmunire, because he was also without the Kings protection, and therefore subject to be destroyed as the Kings enemy: but this was taken away by the wisedome of Queen Eliz. and her Parliament (5 El. 1.) as a libertie not becoming a Christian Common-wealth. Co.ibid.129.b

Lepers. 3 The Law of England for removing of Lepers (by the writ de leproso amovendo) from the societie of men to some solitarie place is grounded upon the law of God. Levit. 13. 44, 45, 46. Numb. 5. 1, 2. Co.ibid.135.b

A Monkish life condemned. 4 In Cholmeleys case in the 2 Rep. fol. 51. where a reversion expectant upon an estate in taile was granted to one for the life of the tenant in taile, it was said, that by possibilitie this grant for life may take effect; for tenant in taile having no issue may become a Monk and enter into religion, and then the grantee may have it during his naturall life: but it was there resolved, that such superstitious and irreligious profession shall not be presumed in law. Co.l.11.ye.b. in *Magdel.* Colledge case.

A Law against Charity void. 5 If a Statute be made directly against the Law of God, as if it should be ordained, that none should give Almes to any, in what necessitie soever he were, or the like, such Statute ought to be adjudged void. Doct. & Stud. l.1.cap.6.

Ecclesiastical Laws. 6 Such Canons, Constitutions, Ordinances, and Synodals provincial, as have been allowed by generall consent and custome within the Realme, and are not contrarient or repugnant to the Lawes, Statutes and Customes of the Realme, nor to the damage or hurt of the Kings Prerogative royall, are still in force within this Realme, as the Kings Ecclesiasticall Lawes of the same. Co.l.5.part.1. 32.b. in the case of the Kings Ecclesiastical Law.

4 The Jurisdiction of the Ecclesiastical Law, ought to be bounded by the Common Law.

Spiritual Laws. Prerogative 1 The Spirituall Lawes mentioned in Littleton (Sect. 648) are such Ecclesiasticall Lawes as are allowed by the Lawes of this Realme, viz. which are not against the Common Law (whereof the Kings prerogative is a principall part) nor against the Statutes or customes of the Realme, and (regularly) according to such ecclesiasticall Lawes the Ordinarie and other Ecclesiasticall Iudges do proceed in causes within their Cognisance, and this Iurisdiction was so bounded by the Ancient Common Lawes of the Realme, and so declared by Act of Parliament. Co.Inst.part 2 344.a. Co.l.5.part 1. 32.b. *Jurisdiction.* Stat.35 H.8.19 33 H.6.34. 32 H.6.18.

5 Dies Dominicus non est juridicus.

The Lords day. 1 In all the four termes the Lords day is not Dies juridicus, for that ought to be consecrated to divine service. Co.Inst.part 1 135.a.

Plene. 2 No plea shall be holden Quindena Paschæ, because it is alwayes the Lords day, but it shall be ex tuto quindenæ Paschæ. F.N.B.17.f.

Fines. 3. Upon a fine levied with proclamations according to the Statute of 4 H. 7. 24. if any of the proclamations be made on the Lords day, all the proclamations are void, for the Iustices may not sit upon that Finches Ley pag.7.

that day, being a day exempt from ſuch buſineſſes by the Common Law for the ſolemnitie of it; to the intent that all people may apply themſelves that day to prayer and ſerving of God.

1 El. Dyer 168 12 E. 4. 8. 3 If a writ of Scire facias out of the Common place beare Teſte upon the Lords day, it is errour, becauſe it is not dies dominicus in Banco. Errour.

4 No ſale upon the Lords day ſhall be ſaid a ſale in Market overt to alter the propertie. Sale.

6 Gravius eſt divinam quam Temporalem lædere majeſtatem.

Co. l. 11. 29. b. *Poulters* caſe. 1 Regularly, a man ſhall (by the Common law) have the benefit of Clergie for any felonie; Howbeit, if a felon be alſo an Heretique, Jew, Sarazen or Infidel, he ſhall not have it. Clergy.

F. N. B. 269. b. Br. Hereſie 1. Co. l. 5. 58. a. *Specots* caſe. 2 Hereſie is an offence committed againſt the Majeſtie of God by a preſumptuous oppugning of an Article of Faith, or the like; And therefore (at the Common law) this offence was puniſhed by a more terrible and grievous mulct, than any other felony whatſoever, (and indeed than Treaſon it ſelfe;) viz. by fire and faggot: Howbeit, to determine, what is Hereſie, falls not within the Conuſance of temporal Courts, but is wholly left to the Eccleſiaſtical Jurisdiction; for it appears by the writ de hæretico comburendo, that (at the Common law) before an Heretique could be committed to the Lay-power to be burnt, he was to be convicted in a Provincial Synod before the Archbiſhop and his Clergie, and then if he did either refuſe to abjure the hereſie, or having abjured it, upon a relapſe were convicted again by ſuch a Synod) of that or any other hereſie, he was then delivered to the ſecular power to be puniſhed by fire and faggot, and no Sanctuarie could priviledge him: Howbeit by the Statute of 2 H. 4. 15. any Biſhop had power to do as much within his Dioceſſe, and if the Sheritfe were preſent at his conviction, the Biſhop might deliver him to the Sheritfe to be burnt, and that without the Kings writ; but that Statute was repealed by 25 H. 8. cap. 14. and thereby that offence made preſentable at Sheritfes Turnes and Leets, and from thence to be certified to the Ordinarie, which Statute the 25 H. 8. was alſo repealed by 1 E. 6. 12. from which time until 1, 2 P. M. 6. (which revived 2 H. 4. 15.) an heretique was puniſhable at the Common Law as above is expreſſed: but by 1 El. 1. the Statute of 1, 2 P. M. was repealed, and then by 1 El. the Queenes Commiſſioners (heretofore called the High Commiſſion Court) had power to judge of hereſie, but they were thereby alſo reſtrained to adjudge nothing Hereſie, but what was ſo adjudged by the holy Scriptures, the four firſt Generall Councils, or the Parliament with the aſſent of the Clergie in their Convocation: Howbeit at this day the Juriſdiction of Biſhops being taken away, and that clauſe of 1 El. repealed by a later Act, it ſeemes (at preſent) there is no law to puniſh that offence. See more concerning hereſies in the Statutes of 5 R. 2. 5. 2 H. 5. 7. 31 H. 8. 14. and 34 H. 8. 1. being all repealed by 1 E. 6. 12. See alſo Li. Intr. 264, and 340. Ralt. Ph. 319. 10. H. 7. fol. 17. and Doct. and Stud. L. 2. cap. 29. Howbeit, obſerve, that the ſaid Statutes made in the raignes of H. 4. and H. 5. were chiefly intended againſt ſuch as did then begin to diſcover the Wiles, Lucre, and errors of the Church of Rome, and in diviſion were termed Lollards, as you may read at large in the Book of Martyrs and elſewhere in divers other authors, as Sleiden, Brightman, &c. Hereſie. *Frowick* Lect.

Star. 18. E. 3. Star. 3. 8. 3 One part of the Judges oath is, that they ſhall not deny right, though it be by command from the King, which if they breake, they will be found The Kings command againſt Law not to be obeyed by the Judges.

found guilty Læsæ Majestatis divinæ; And therefore in such case they ought rather to disobey the Kings commands then thereby incurre the high displeasure of Almighty God, for Gravius est divinam, &c. And to the end that the Iudges might be the better protected from this danger, the prudents of former times hath ordained divers Lawes, whereby the Iustices have power to proceed, notwithstanding any command from the King to the contrarie, no, though it be under the Great or Privie Seal: And therefore if the King write to the Iustices to prorogue an Assize, because the defendant is in his service, yet the Iustices ought to proceed, and not to cease for any such letter: so likewise in an Assize the Bishop certifies Wastardie, and the Kings letter is sent to the Iustices to cease, because the certificate was suspicious, notwithstanding which letter they tooke the Assize; and afterwards, albeit the Chancellor reversed the taking of the Assize in the Councell, because they obeyed not the letter, yet notwithstanding that the Iustices gave Iudgement upon the Assize: Also in dower the tenant was essoined, and had further day given, at which the King sends a letter to excuse the tenants appearance, alleadging that he was at Callis in his service. Howbeit the Iustices gave no regard to it, but proceeded notwithstanding that letter.

Stat. 2. E. 3. 8.

Stat. 10. E. 3. 1.

F. N. B. 153. h.

29 E. 3. 14. Judgment 117

22 E. 3. 11. Judgment 185

Nor by the Sheriff.

4 The Sheriffe also, who is but an Officer or Minister to the superiour Courts of Iustice, ought not to desist from the due execution and return of writs directed unto him notwithstanding any command to the contrary from the King, least he likewise incurre the like danger by breaking his oath: And therefore we read in 14 E. 3. that N. de B. being attainted of divers crimes with force, An Exigi facias went forth against him to the Sheriff, who returned, that the King had certified him by writ, that he had pardoned the trespasse and imprisonment, commanding him that he should desist, and that therefore he had not executed the writ; whereupon saith Wilby, the writ ought first to have beene sent to us, that we might have commanded the Sheriffe to cease, for the Sheriffe ought not for any such writ to have ceased to serve the Exigi facias without commandment from the same Court, out of which it issued, and thereupon the Sheriffe was amerced, and another Exigi facias issued out: The Escheator also ought not to desist from the execution of his office, notwithstanding any such commands to the contrarie from the King: And therefore we find in 1 Eliz. That after the death of the Lord Powes a Mandamus being directed to the Escheator of Salop to find the office, he takes the presentment of the Jury in paper, and adjournes them over to another day to take it in Parchment and by Indenture, before which day the Queen sends a Supersedeas at the suit of one Herbert and his wife, And it was adjudged, that the Escheator ought not to have obeyed that Supersedeas.

14 E. 3. Returns del Viscont, 85.

Dyer 190. 1 & 2 Eliz.

Nor by the Escheator.

7 The Law disfavoureth an excomunicate person.

Excommunication.

1 It is a good plea in abatement of a writ to say, that the Plaintiffe is excommunicate. Doct. & Stud. l. 1. cap. 6.

Lit. § 201. Co. Inst. pars 1 133. b.

Jury.

2 The old Bookes have said, that if a man be excommunicate, he ought not to serve of a Jurie.

Co. ibid. 158. a.

Jews

3 A Jew borne in England took wife a Jew borne also in England, the husband was converted to the Christian faith, purchased lands, and enfeoffed another, and dies, the wife brought a writ of Dower, but was barred thereof, and the reason yeelded in the record is this, Quia verò contra justitiam est, quod ipsa dotem petat vel habeat de tenemento, quod fuit viri sui, ex quo in conversione sua noluit cum eo adhærere, & cum eo converti, &c.

Co. ibid. 31. b. & Rot. Parl. 26 E. 1. Rot. 1.

4 Infidels are accounted in Law to be perpetui inimici, with whom a Chriſtian ought to have no peace, but perpetual enmitie and hoſtilitie, according to that of the Apoſtle, 2 Cor. 6. 15. Quæ autem concordia Chriſto cum Belial? aut quæ portio fideli cum infideli? And the Law ſaith, Judæo Chriſtianum nullum ſerviat mancipium, nefas enim eſt quem Chriſtus redemit Blaſphemum Chriſti in ſervitutis vinculis detinere: Regiſt. 282. Infideles ſunt Chriſti & Chriſtianorum inimici, and herewith agreeth the book in 12 H. 8. fol. 4. where it is holden, that a Pagan cannot have or maintaine any action at all; and upon this ground there is a diverſitie betweene the Conqueſt of a Country of a Chriſtian Prince, and the Conqueſt of a Country of an Infidel; for if a Prince obtaine a Chriſtian Country by Conqueſt, ſeeing that he hath vitæ & necis poteſtatem, he may at his pleaſure alter and change the Laweſ of that Nation; but untill he do make an alteration, the ancient Lawes thereof ſhall remain: Howbeit if a Chriſtian Prince ſhould conquer a Country of an Infidel, and bring them under ſubjection, there ipſo facto the Lawes of the Infidel are abrogated; for they be not onely againſt Chriſtianitie, but againſt the Law of God and nature, contained in the Decalogue: And in that caſe untill certaine Lawes be eſtabliſhed amongſt them, the Prince by himſelfe or ſuch Judges as he ſhall appoint, ſhall judge them and their cauſes according to natural equity and originall Juſtice, in ſuch ſort as Kings in ancient time did within their Kingdomes, before any certaine municipal Lawes were eſtabliſhed: But where a Prince hath the Government of a Nation by deſcent, ſeeing that by the Lawes of the Nation he doth inherit that Authority, he cannot change the Lawes thereof without the conſent of the People aſſembled in Parliament.

Infiels.

Co. l. 7. 17. a. b. in *Calvins* caſe

The power of a Conquerour.

MAX.

II Maxims of Reason, taken from GRAMMAR.

8 The Rules from Grammar are infinite, in the Etymologie o words, and in the Conſtruction of them, what their nature is ſingle, what joyned with others, &c.

A Leaſe with condition to take the profits.

1 IF a man make a Leaſe for yeares reſerving a rent, with a condition, that if the rent be behind, the Leſſor ſhall re-enter, and take the profits, untill thereof he be ſatisfied; in this caſe the profits ſhall be accompted as parcel of the ſatisfaction, and during the time that he ſo taketh the profits, he ſhall not have an action of debt for the rent, for the ſatisfaction whereof he ſo taketh the profits: but if the condition be, that he ſhall take the profits, untill he be ſatisfyed and paid of the rent (without ſaying thereof) or to the like effect, there the profits ſhall be accompted no part of the ſatisfaction, but onely to haſten the Leſſee to pay it, and untill he be ſatisfied he ſhall take the profits to his owne uſe. Co. Inſt pars 1 203. a.

Commencement of a Leaſe.

2 If a leaſe be made, Habendum ſibi à die confectionis, the day of the making is excluded; for (a) vel (ab) is dictio ſignificativa primi termini à quo, ſicut dictio (uſque) termini ad quem, & (a) vel (ab) accipitur excluſivè. Vide infra 12. & Max. 34. 2. Col. l. 5. 94. a. in *Barwicks* Caſe.

Poſſeſſion derived.

3 Poſſeſſio is derived à Pos and ſedeo, becauſe he that is in poſſeſſion may ſit down in repoſe and quiet: ſo alſo ſeiſina is derived à ſedendo, for untill he hath ſeiſin all is Labor, Dolor, & vexatio ſpiritus; but when he hath ſeiſin, he may ſit down and reſt: Howbeit, Quære, whether or no poſſeſſio be derived of Poſt and ſedeo, becauſe he that hath poſſeſſion ſits downe laſt, and ſeiſina ſeemes to be derived of the French word ſeiſer, which ſignifies to lay hold on. Co. l. 6. 57. b. in *Bredimans* Caſe.

Tempus ſemeſtre.

4 Tempus ſemeſtre being ſpoken in the ſingular number (as appears in the Dictionaries) ſignifieth half a year or ſix moneths, viz. ſuch ſix moneths, qui conficiunt dimidium anni, & there is a great diverſitie in our cõmon ſpeech between a Twelve-moneth (being ỳ ſingular number wh̃ includes a Co. l. 6. 62. a. in *Catesbies* Caſe.

a whole yeare according to the Kalender, and twelve moneths (in the plural number) which ſhall be computed according to 28 dayes for every moneth, Vide 31. 13.

Co.l.8 85.b. in Sir *Richard Pexhals* Caſe

5 A. deviſeth to B. 100 Sheep and ten Bullocks, and 10 l. iſſuing and payable yearely out of his lands; here, the laſt (and) diſjoynes the rent from the Sheep and Bullockes: It is otherwiſe; if he had deviſed them thus, 100 Sheep, ten Bullockes, and 10 l. yearely; for then the (and) conjoyneth them all together, and then they are all to be paid yearely out of the lands. Deviſe.

Co.l.10.133.a *Osborns* Caſe.

6 Words, which paſſe under the name of Latin, are of four ſorts, the firſt is good and congruous Latin allowed by Grammarians; And this (without queſtion) is within the Statute of 36 E. 3. 15. which ordaines, that all pleas ſhall be entred and enrolles in Latin. The ſecond ſort are ſuch words as theſe, Meſſuagium, Toſtum, Gardinum, Bruera, Jampna, &c. Theſe and the like are allowed not only in Pleas, but alſo in originall writs; for theſe are ſuch words as are knowne to the Sages of the Law, and are alſo within the Statute of 36 E 3. ſuch words as are called words of Art, and are frequent alſo in other Sciences, as amongſt the Civilians, Repriſalia, Feuda, Shopa, Sollaria, &c. who uſe many times to explaine them by Anglicè, &c. as Sollaria anglicè Ware-houſes; The Phyſicians alſo uſe Brothium for broth, and the like: The third ſort is falſe and incongruous Latin, this ſhall abate an originall writ, but ſhall not make a Judicial writ, count, pleading, or judgement victious (for falſe Latin ſhall in ſuch caſes be amended:). And therefore (a fortiori) ſuch Latin or falſe Engliſh ſhall not avoid a grant or deed, when the intention of the parties may appeare, as in a bill or bond, Octogenta, Septungenta, Wiginti, Sewteene, or the like, ſhall be taken for Octoginta, Septingenta, Viginti, Seaventeene &c. Alſo when there is no latin for a word, as for a Stirrup, Velvet, &c. Strapedia, Velvetum, &c. may be uſed, becauſe they have the countenance of latin, ſo alſo Operimentum for a Rugge: Howbeit, in ſuch caſe, (for explanation ſake) it will be fit alſo to inſert the word Anglice, as Operimentum anglice a Rugge, Duas virgatas velveti, anglice, of velvet, &c. The fourth and laſt ſort are inſenſible words, as in a caſe of a Replevin, P. 36 El. Gawins caſe, Vitrium for Vitrum, glaſſe: yet (in that caſe) the Court did incline onely to adjudge it falſe latin, becauſe it had the countenance of latin, and the Court was ſufficiently aſcertained, that glaſſe was meant by it. Latine words, *Senſible*, and *Inſenſible*.

M.3, & 4. El. R. 1350. M.44, & 45. R.1031. 9 H.6,7. 9 H.7.16. 2 H.4.8. M.11. Jac.

Pl.Co.85.b. in *Partridges* Caſe.

7 If I give you a quart of wine, you ſhall not have the quart-pot, but if I give you an Hogſhead of wine, you ſhall have the Hogſhead; for the phraſe of the language expreſſeth the intent; ſo 11 acres belonging to a Meſſuage will ſufficiently declare, which 11 acres are meant, although land is not properly ſaid to belong to an houſe, but the houſe to land. Phraſe of ſpeech.

Co.l.2.71.a. the Lord *Cromwels* Caſe.

8 Note, in Docwras caſe, 27 H. 8. 18. a. in Litt. cap. conditions, 14. El. Dyer 311. 4. and 5. P. M. Dyer 152, that this word Proviſo makes a condition: But when the Proviſo depends upon another ſentence, or hath reference to another part of the deed, it never makes a condition, but a qualification or limitation of the ſentence, or part of the deed, unto which it referres; as in 5 El. 22. inter Eyre and Orme, a notable caſe: ſo in 7 H. 6. a leaſe without impeachment of waſt, provided, that he ſhall not make voluntarie waſt: In Litt. Sect. 220. A grant of rent charge, provided, that the grantee ſhall not charge his perſon: Tramingtons caſe in the K. B. P. 16. El. Rot. 273 there a Proviſo tending to a qualification, and to explaine a precedent ſentence; makes not a condition: Ans 3, 4. P. M. 150. Parkers caſe, a Proviſo amounts to a covenant ſee 28 H. 8. Dyer. 13 b. Where a Proviſo makes a condition, and where not.

9 Three

Utrumque.

9 Three were bound in an obligation thus, Obligamus nos & utrumque noſtrum per ſe pro toto & in ſolid. The queſtion was, whether or no this obligation was ſeveral; And one of the Judges was of opinion that it was not ſeveral; becauſe utrumque is properly of two, viz. both; And it ſhould have been quemlibet noſtrum, &c. when more than two are bound: Howbeit it ſeemed to the Court that the obligation was good and ſeveral. Vide 31. 12. Dyer 19. 114. 28 H. 8.

Confirmation.

10 If the diſſeiſee confirme the eſtate of the diſſeiſor, though it be but for an hour he ſhall have a lawfull eſtate in fee ſimple for ever, quia confirmare eſt firmum facere. Litt. *Sect.* 519 & 520.

Expoſition of *ille.*

11 If the King or a common perſon grant omnia illa meſſuagia in tenura Johannis Browne ſcituat. in Wells, whereas in truth they lie in D. in this caſe, becauſe the grant is general and is reſtrained to a certaine Towne, the Patentée or Grantée ſhall not have any lands out of that Towne, unto which the generaltie of the grant referres, and this caſe is the ſtronger, becauſe of the Pronoune illa, for omnia illa meſſuagia &c. maketh neceſſary reference as well to the towne, as to the tenure of I. B. ſo that if either faile, the generall grant is void; for illa is not ſatisfied, untill the ſentence be ended, and illa governs the whole ſentence to the full point. Vide infra max. 10. cap. 5. Co. l. 1. 33. a. *Dodingtons* Caſe.

Commencement of a Leaſe.

12 Indentures of demiſe were ingroſſed bearing date the 26 of May Anno 25. Eliz. to have and to hold for three yeares from henceforth and the Indentures were delivered at 4 of the clock in the afternoone of the 20 day of June Anno prædicto Eliz. In this caſe, from henceforth ſhall be accounted from the time of the delivery of the Indentures, and not by any computation from the date, for from henceforth, is as much as to ſay, from the making, or from the time of the delivery of the Indentures, or a confectione preſentium; becauſe the confection or making of the Leaſe commenceth by the delivery; and theſe words from henceforth or any other words of the Indenture are not of any force or effect untill the delivery, Quia traditio facit locum tantum. Vide ſupra 2. Co. l. 5. 1. a. *Claytons* Caſe.

9 *In Conjunctivis oportet utrumque, in disjunctivis ſufficit alteram partem eſſe veram.* Bract. l. 2. fol. 19. a.

Conjunction copulative.

Taile.

Condition.

1 If lands be given in taile upon condition, that if the tenant alien in fee, fee taile, or for terme of life &c. and alſo if all the iſſues of tenant in tail die without iſſue, that then it ſhall be lawfull for the donor and his heires to re-enter; here, the right of the intaile may this way (after diſcontinuance) be preſerved to the iſſue in taile (if any be) ſo that upon entry of the donor and his heirs the eſtate taile ſhall not be defeated for ſuch condition. And yet in this caſe if the tenant in taile or his heires make any diſcontinuance, be in the reverſion or his heires after the eſtate taile determined (for default of iſſue) may enter into the land by force of that condition, and ſhall not be put to his Formedon in reverter. Note, that here Littleton doth purpoſely make parcel of the condition in the copulative, viz. that the tenant in taile ſhould alien, &c. and all the iſſues die, &c. for if a gift in taile be made to a man and the heires of his body, and if he die without heires of his body, that then the donor and his heires ſhall re-enter, this is a voyd condition; for when the iſſues faile, the eſtate determineth by expreſſe limitation, and (conſequently) the adding of the condition to defeat that, which is determined by the limitation of the eſtate, is voyd; and in this caſe the wife of the donée ſhall be endowed: And therefore Littleton to make the condition good, added an alienation, which amounted to a wrong, and reſtrained not the alienation onely (for then preſently upon the alienation the donor, &c. Litt. *Sect.* 364. Co. Inſt. pars 1 224. b.

might re-enter and defeat the eſtate taile) but addeth, and die without iſſue, to the end that the right of the eſtate might be preſerved, and not defeated by the condition, but might be recovered againe by the iſſue in taile in a Formedon.

Co.ibid.125.a. Pl.Co. 107. in *Fulmerſtons* Caſe.

2 Note, that in a condition conſiſting of divers parts, in the copulative (as above in the caſe of Littleton) both parts muſt be perform-ed; but otherwiſe it is, when the condition is in the disjunctive; for in disjunctivis ſufficit alterum eſſe verum, what then if the condition or limitation be both in the copulative and disjunctive, as if a man make a leaſe to the husband and wife for the terme of 21 yeares, if the husband & wife or any child betweene them ſo long live, and then the wife dieth without iſſue, ſhall the leaſe continue or determine during the life of the husband? The anſwer is, that it ſhall continue; for the disjunctive referreth to the whole, and disjoyneth not onely the latter part as to the child, but alſo to the barn and feme; ſo as the ſence is, if the barn, feme, or any child ſhall ſo long live. So if an uſe be limited to certaine perſons, untill A. ſhall come from beyond Sea, and attain to his full age, or die; here, if he doth come from beyond Sea, or attaine to his full age, the uſe ſhall ceaſe. Conjunction copulative and disjunctive.

Pl.30. El.in C. B. *Truepennies* Caſe.

Co.l.10.59.a. The Biſhop of *Sarums* Caſe.

3 In Avowry exception was taken to the barre, becauſe where the avowant had alleadged by matter in fact, that the office (for which the annuitie was due) had been granted to ſuch perſon or perſons as pleaſed the Biſhop of Sarum, &c. the defendant in his barre had pleaded in the negative, that the ſaid office had not been granted but for the life of one, &c. and therefore the defendant ought to have concluded, & hoc quærit, quod inquiratur per patriam, whereas he concluded all his plea with, & hoc paratus eſt verificare, &c. ſed non allocatur; for the Avowant alleadged not that the ſaid office has beene granted, &c. to divers perſons, but to ſuch perſon or perſons as pleaſes the Biſhop; Et in disjunctivis ſufficit alterum eſſe verum: ſo that the defendant did not traverſe what the Avowant had alleadged. Negative pregnant. Pleading.

Pl.Co.5.b: *Fogaſſes* Caſe.

4 The Statute of 1 El. 13. (for the payment of Subſidies for Merchandize) is in the disjunctive, viz. the ſubſidie not paid, or the Collector not agreed with: And therefore if either of theſe be done the intent of the Statute is performed. Disjunctive.

Pl.ibid.9.a.

5 The Statute of 26 H.8.3. is in the disjunctive, viz. that every Parſon, Vicar, &c. which before they enter upon their benefice doe not ſatisfie, content or pay, or compound or agree to pay to the King the firſt-fruits, &c. ſhall be taken as intruders; And therefore although they do not pay downe the firſt-fruits immediately, but agree to pay them, or (as the Common uſe is) give bond for them, it is ſufficient. Disjunctive.

Dyer 43.22. &c. 30 H.8.

6 A Merchant having payed cuſtom for certain Clothes, ſhips them for beyond-ſea, & in a tempeſt the Partiners (for the ſafeguard of themſelves and the ſhip) were forced to throw the Clothes over board, and comming back to the ſame port, they asked the Cuſtomer whether or no they might (having that misfortune) tranſport as many more Clothes without paying Cuſtome, the Cuſtomer told them he thought they might; which they did accordingly; hereupon an Information being brought, the iſſue joyned was, Quod Cuſtomarium & Subſidium non fuerunt ſolut. nec cum Collectore concordat. Sed omnino concelat. & ſubſtract. contra formam ſtatuti, &c. And it was found by the Niſi prius at Guild-hall, Quod Cuſtomarium & Subſidium, &c. non concelat. & ſubſtract. contra formam ſtatuti, &c. And here it was doubted whether the verdict was for or againſt the King; for the verdict had beene perfect if it had been, Quod non fuerunt concelat. aut ſubſtract. if the Jury had intended to find for the defendant; but now their intent Cuſtome concealed.

(as-

(as it ſæmes) was to acquit the defendant of the concealment, but not of the Subtraction.

10 Words in conſtruction muſt be referred to the next antecedent, where the matter it ſelfe doth not hinder it.

Remainder where good or void.

1 If a man gives land to A & hæredibus de corpore ſuo, the remainder to B in forma prædicta, that is a good eſtate to B. becauſe in forma prædicta doth include the other; But if a man letteth lands to A. for life, the remainder to B. in tail, the remainder to C. in forma prædicta, this laſt remainder is void for the uncertaintie; Howbeit if the remainder had been, the remainder to C. in eadem forma, this had been a good eſtate tail, for, Idem ſemper proximo antecedenti refertur. Co. Inſt. pars 1. 20. b. Co. ibid. 385. b.

Releaſe.

2 M. releaſeth to N. Omnimodas actiones tàm reales quàm perſonales, ſectas, querelas, & demanda quæcunque, nec non totam dotem ſuam ac titulum & actionem dotis ſibi contingent, poſt mortem M. viri ſui de aliquibus terris & tenementis ſuis in W, quæ vel quas illa præfata M. vel executores ſui verſus ipſum N, &c. Here, the words of Relation (Quæ vel quas) do referre as well to the ſpecial words Dowers, &c. as to the generall words Actions, &c. and Demands; for it would be againſt reaſon, that they ſhould referre to the general words, which are more remote, and not to the words of qualification, which are nearer unto them. Co. l. 8. 154. b. *Alsdam's* Caſe.

Pretended rights.

3 The Statute of 32 H. 8. 9. provides, that none ſhall buy rights or titles in land, unleſſe ſuch perſon, &c. have bene in poſſeſſion of it, or of the reverſion or remainder of it, or have taken the rents and profits of it by the ſpace of one whole yeare next before; Here, theſe words by the ſpace of one whole yeare, ſhall be onely referred to the ſentence next before viz. the taking of the rents and profits. Pl. Co. 88. a. in *Partridge's* caſe

Abbey Lands. Leaſes.

3 The Statute of 31 H. 8. 13. ordaines, that farmers of Abbey lands, which had then Leaſes in being, ſhould enjoy them for 21 yeares from the time of the making of ſuch leaſes, if ſo many yeares were therein limited; or elſe they ſhould enjoy them for ſo many yeares, as in ſuch leaſe or leaſes were expreſſed, ſo that the ſame leaſe or leaſes exceeded not 21 yeares; Here, this laſt ſentence, ſo that, &c. relates to the clauſe next going before it, and not to the firſt; Ad proximum antecedens fiat relatio. Pl Co. 109. a. *Fulmerſtons* caſe.

Alienation of an entail.

4 Sir Th. Cheyney in 1 El. deviſeth, &c. to H. his ſonne, and to the heires male of his bodie, remainder to Th. Cheyney of D. and the heires male of his bodie upon condition, that he or they or any of them ſhall not diſcontinue: The queſtion was, whether or no H. the ſonne was included within theſe words he or they; And it was reſolved by Wray and Anderſon after conference had with other Judges, that theſe words ſhould not be referred to the grant made to H. the ſonne, but onely to the grant made to Th. Ch. of D. Co. l. 5. 68. a. The Lord *Cheyneys* caſe.

Tithes.

5 Qu. El. grants to I. S. Totam illam portionem decimarum, &c. in L. in com. N. cum omnibus aliis decimis ſuis quibuſcunque in L. in dict. com. N. nunc vel nuper in occupatione I. C. Here, theſe laſt words nunc vel nuper, &c. referre to the whole ſentence, and not to the later part of it onely, viz. cum omnibus aliis, &c. 1 Becauſe the firſt words are Totam illam portionem Decimarum, &c. So that this pronoune illam ſheweth plainly, that there ought to be ſubſequent words to explain, and reduced, into certaintie, what portion by the intention of the Qu. ſhall be granted, viz. that which was in the occupation of I. C. And therefore this pronoune illam is not ſatisfied, untill you come to the full

The reference of *illam*.

end Co. l. 4. 35. a. *Bozons* caſe.

end of the ſentence: 2 This Conjunction cum omnibus aliis, &c. couples the laſt words with the former, and makes the ſubſequent words referre to the whole ſentence, Vide ſupra Max. 8 Caſe 11.

Dyer 46.b. P.31,& 32. H.8. — 6 An Indictment found in this manner, that Eliz. fuit in pace,&c. quouſque A. vir prefatæ Eliz. de D. in com.S. yeoman did kill her, is good; for the addition yeoman muſt of neceſſity referre to the husband becauſe a woman cannot be a yeoman: But an Indictment, Quouſque Alicia S. de D. in comit S. uxor I. S. Spinſter, &c. is not good again Alice S. for there Spinſter being an indifferent addition both to man and woman muſt referre to I. S. being the next antecedent, and ſo the woman hath no addition: ſo likewiſe an indictment againſt I. S. ſerviens I. D. de D. in com. Midd. yeoman, is not good; for ſervant is no addition, and yeoman, referreth to the Maſter, which is the next antecedent. — Indictment.

9 E.4.48.

Dyer 15.b. 28 H.8. — 7 A man makes a leaſe for life, the remainder in taile, the remainder to I. S. in forma prædicta, this ſhall not referre to the eſtate, which is the next before, but to the firſt eſtate becauſe there wants the word heires to cauſe him to have an eſtate taile. — *In forma prædicta.*

Dyer ibid. — 8 A man is bound to abide the award of I. S. who awards, that the one party ſhall pay before ſuch a feaſt 10 l. to the other, and that then the other ſhall make him a releaſe. This word then ſhall not be referred to the feaſt, but to the time of payment of the money. — Relation of time.

Dyer ibid. — 9 In a Cui in vita brought by a feme, the writ is, Cui ipſa in vita ſua contradicere non, &c. this word ſua ſhall not be referred ad proximum antecedens viz. ipſa, but to the baron. — *Cui in vita.*

11 The Law delighteth in apt expreſſions.

Co.Inſt.pars 1 301. a. — 1 Whenſoever a Confirmation doth enlarge or give an eſtate of Inheritance there ought to be apt words (as Litt. expreſſeth them Sect. 533) uſed for the ſame. — Apt words.

Co. ibid. 297. a. — 2 If a diſſeiſor make a leaſe for 100 yeares, the diſſeiſee may confirme parcel of thoſe years, but then it muſt be by apt words; for he muſt not confirme the leaſe, or demiſe, or the eſtate of the Leſſee; for in that caſe (though it ſhould be but for an houre) it gives the diſſeiſor fee ſimple for ever (as you have it in Litt. Sect. 519 and 520.) and then alſo the addition of parcel of the terme would be repugnant, if the whole were confirmed before; but the confirmation muſt be of the Land for part of the terme. — Confirmation.

Co.l.1 85.a. in *Corbets* Caſe. — 3 Judges ought to know the intention of the parties by certaine and ſenſible words, which are agreeable and conſonant to the Rules of Law, And therefore if Land be given by deed to two, to have and to hold to them & hæredibus, this is voide for the inſenſibility and uncertainty; And albeit they have a clauſe of warranty to them and to their heires, this ſhall not make the firſt words, which are uncertain and without ſenſe, to be of force and effect in law, although his intent appeare; for his intent ought be declared by words certaine and conſonant to law. — Certain and uncertain words.

Co.l.6.26.a. *Sharps* Caſe. — 4 If one ſaith thus, unto another, I do here demiſe unto you my houſe for terme of your life; this is a good beginning, if actual livery be made accordingly, or if he uſe apt words, which may amount to ſo much; but without livery or ſuch words, ſuch a demiſe doth amount but to a Leaſe at will. Vide Thoroughgoods caſe Co. l. 9. 137. b. — Improper words.

Co.l.6.48.a. — 5 In Sir Anthony Mildmayes caſe it was obſerved, that in the Proviſo there (to reſtraine the tenant in taile from alienation) found at large — Compendiouſneſs.

by

by the ſpecial verdict, there were more then a thouſand words, whereas (in our books) when the tenant in tail was reſtrained from alienation, there were under twelve words: Hæc fuit candida illius ætatis fides & ſimplicitas, quæ pauculis lineis omnia fidei firmamenta poſſuerunt: It may be alſo obſerved, that the Statutes made before the reign of H. 8. were ſhort and concile, but from his time (eſpecially from the twentieth yeare of his reigne) they are much more politr and voluminous, whereas Lawes and Precepts ought to be ſhort and ſignificant, to the end they may be eaſily underſtood, and the better retained in the memorie, according to that of Eraſmus in his religious Colloquie, Præſtat pauca avidè diſcere, quam multa cum tædio devorare; And that of Horace; Co. l. 10. 30. b. *Sutton's Hoſpital.*

Quicquid præcipies eſto Brevis, ut citò dicta
Percipiant animi docilcs, teneantque fideles.

Franchiſe. Preſcription.

6 A Preſcription to have all wild Swans, which are feræ naturæ, and not marked, nidificant. gignent. & frequentant. within ſuch a Creeke, is inſufficient; ſo is alſo ſuch a preſcription for a Warren, viz. to have all Phéſants and Partridges nidificant. gignent. & frequentant. within ſuch a Manner, but he ought to ſay, that he hath Free warren of them within the Manor; for albeit they be nidificant. &c. within the Manor, yet he cannot have them Jure privilegii but onely ſo long as they are within that place: Howbeit a Preſcription thus alleaged is good, viz. that within ſuch a Créeke there hath béen time out of mind, &c. a game of wild ſwans not marked, nidificant, &c. And then to preſcribe, that ſuch an Abbot and all his predeceſſors, &c. have alwayes uſed to have and take to their uſe out of ſome of the ſaid wild Swans, and their ſignets within the ſaid Créeke, ſuch a preſcription (I ſay) is good; for albeit Swans are Royal foul, yet this way a man may preſcribe in them, becauſe that may have lawfull beginning, viz. by the Kings grant. Co l. 7. 18. a. The Caſe of Swans.

Debet & detinet.

7 The forme of a writ of debt ſhall be ſometimes in the debet and detinet, and ſometimes in the detinet onely, and then if it be the debet it ſhall abate: It ſhall be always in the debet and detinet, when he that makes the bargaine or contract or borrows the money, or he, to whom the obligation is made, brings an action againſt him that is bound, or is party to the bargain contract or borrowing, and alſo when the action is brought for money: But if a man ſel 20 quarters of wheat for an horſe, here if he bring a writ of debt for the horſe, the writ ſhall be in the detinet onely: And the Rule of the Regiſter is, quod in brevi debito, de catallis nunquam dicetur quòd ei debet: Alſo if a writ of debt be brought by executors upon a dutie due to their teſtator, the writ ſhall be, quòs eis detinet, and not debet & detinet, becauſe they were not partie to the contract: ſo likewiſe if a writ of debt be brought againſt executors by the creditor upon a dutie by their teſtator, the writ ſhall be quos ei detinent, and not debent & detinent, albeit he demand money, as 20 l. or any other ſum. F.N.Br, 88. b. F.N.B. 119. h. Fitz. ibid. m.

Annuity.

8 In a writ of annuitie the forme, is Quem ei debet, when anything that is not money is demanded. It is otherwiſe in an action of debt, for if it be for money, the demand ſhall be in the debet, but if it be for any thing elſe, it ſhall be in the detinet and not in th debet: And in debt alſo if a man demand money and ten quarters of wheat, then the formes of the writ ſhall be, Præcipe A. quòd juſtè, &c. reddat B. decem libras, &c. quas ei debet, & decem quarteria frumenti, quæ ei injuſtè detinet, &c. F.N.Br. 152. e.

Non eſt factum

9 If a man be taken in execution by the Sheriff upon a ca. ſa. and

Pl.Co.66.a. *Dive* and *Manninghams* case. the Sheriffe takes bond of him for his apperance and rendring himselfe true prisoner, contrary to the Statute of 23 H. 6. 10. In an action of debt brought by the Sheriff against the obliger, it is no apt conclusion for the obliger to say, judgement se action, but he ought to conclude with nient son fait; for the Statute saith, if an obligation be taken in another forme, then is conteined in that Statute, that it shall be void, and if it be void, it was void from the beginning, and therefore never his deed. Vide plus ubi suprà.

F.N.Br.151.g. 10 When a writ of Customes and services is in the right onely, then the demandant shall count of the seisin of his Ancestor, and the writ shall be in the debet onely; but when he comes of his owne seisin, then the writ shall be in the debet & solet. Customes and services.

Co.Inst.1.291.a. 11 If A. be accountable to B. and B. releaseth him all his duties, this is no barre in an action of accompt; for duties extend to things certain, and what shall fall out upon an accompt is uncertain: And albeit the latin word is debita, yet duties do onely extend to all things due, which be also certaine; And therefore dischargeth Judgements in personall actions, and executions also. Accompt. Release.

F.N.Br.8.c. 12 Where a feme is endowed of parcel of her Dower, and would demand the rest against the same tenant and in the same town; In this case, for the recovery therof she shall have a writ of right of Dower, and not a writ of Dower undè nihil habet; for the words of this writ will not serve, because she hath already received part of her Dower; And therefore she must of necessitie sue a writ of right of Dower to recover the residue. Dower.

Co.l.11.55.a.4 in *Edward Lawes* case. 13 An Ejectione firmæ lyeth not of a Close, although it hath a certaine name, as Dovecot Close, containing three acres, but it ought to be of so many acres, and ought also to shew of what natures those acres are, as Land, Meadow, Pasture, Wood, &c. and the certainty ought to be comprised in the Court, because he shall recover the possession by Habere facias possessionem, and shall ensue the forme of other writs of like nature, as a Writ of ward or Ejectment de guard, or the like, shall not be of a Close by a certain name, but ought to be by the certainty of acres conteining withall the quality of the soile, as Land, Meadow, Pasture, Wood, &c. *Ejectione firmæ.*

12 *Nomina si nescis perit cognitio rerum.*

Co.Inst.1.68.b 1 Right Interpretations and Etymologies are necessary; for, Ad rectè docendum primum oportet nomina inquirere, quia rerum cognitio à rerum nominibus dependet: And herewith agreeth that which is said, Primò excutienda est verbi vis, ne sermonis vitio obstruatur oratio, sive lex sine argumentis. Etymologie.

Co.ibid.86.b. 2 By the Etymologie of the word Soccagium, Littleton declareth the nature of the tenure, & distinguisheth it from Knight service, whereby it appeareth that names of things are diligently to be observed for distinction sake, and to avoid confusion, Nomina si perdas, certè distinctio rerum perditur. Soccage.

Co.l.5.122.a. 3 In Longs case in the 5. Rep. a wound may be as properly said to penetrate as a bullet, quia penetro derivatur à penitus & intrò.

13 *Mala Grammatica non vitiat chartam.*

Co.Inst.pars 1. 146 b.& 223.b 1 Sir Edward Coke observes, that Litt. Sect. 220. in a grant of an Annuity inserts a Proviso for the discharge of the Grantors person, with a double Negative, viz. nec aliquid in eo specificatum non aliqualiter se extendat, &c. Here nec and non do in a Grammatical construction amount A double Negative.

amount to an affirmative; for, Negatio destruit negationem, & ambo faciunt affirmativum; yet the Law that principally respecteth substance doth judge the Proviso to be a Negative according to the intent of the Parties, and not according to Grammatical construction, to the end the Proviso may take effect: Howbeit observe that in Greek and French a double negative maketh the negation more forcible; And therefore Quere, whether Littleton being much acquainted with the Law-french doth not expresse that Latin according to the French Phrases.

False Latine. 2 Falsa Orthographia aut grammatica non vitiat concessionem, & semper ille numerus & sensus abreviationum accipiendus est, ut concessio non sit inanis: And therefore if the King grant Tot. ill. Maner. de D. & C. if it be (in truth) but one Manor, then those abbreviations tot. ill. Maner. shall be taken in the singular number for Totum illud Manerium; but if they be in truth two distinct Manors then they shall be taken in the plural number, for Tota illa Maneria, for otherwise the grant would be void. In 32 E. 32. 3. A Scire facias rehearseth, that a fine was levied de maneriis B. & H. and the conclusion was Quare prædictum Manerium de B & H. ingressus est, and it was adjudged good with averment, that B. and H. were (indeed) but one Manor. Co. l. 9. 48. a; in the Earl of Shrewsburies case.

One Office in two persons. 3 Letters Patents made to John Periont and Willim Tooke de officio unius Auditorum curiæ suæ Wardorum, was adjudged good; for albeit the statute enacts, that there shall be two persons, which shall be called Auditors of the Lands, &c. so as there shall be two persons and they called two officers, yet it is but one office, and they are both but unus officiarius, and so the Statute it selfe saith, Those two persons called Auditors shall be called the fourth officer of that Court; And therefore the grant de officio unius Auditoris, or unius Auditorum is good enough: The like case is adjudged in 9 E. 4. 1. upon the grant de officio unius Clericorum de Corona in Cancellaria, &c. according to the Rule Mala grammatica, &c. Co. l. 11. 4. Auditor Earl's Case.

False Latine. 4 An Indictment or Count shall not be quasht for false Latin or false Orthographie, so that a proper Latin word may be knowne by it, as Præfato, Reginæ, Mamilla, Diffamo, diffinitio, for Prætactæ, Mammilla, Defamo, Definitio. Co. l. 5. 121. a; Longs case.

14 *Qui hæret in litera hæret in Cortice.* Vide Pl. Co. 109. b. &c.

Recovery by default. 1 Although by the words of the Statute of Westm. 2. cap. 4. upon a recovery by default against baron and feme, à quod ei deforceat is not allowed them, because the baron is not properly tenant for life, but seised onely in the right of his wife, and therefore out of the words of that Statute; yet the contrary hath been often adjudged; for, the Law of England respecteth the effect and substance of the matter, and not every nicitie of forme or circumstance; Aspices juris non sunt jura, & parum differunt, quære concordant. Co. Inst 1. 356. a. & 283. a. Westm. 2. 4.

2 A man seised of lands in fee levies a fine to the use of himselfe for life, and after to the uses of his wife, and of the heirs male of her bodie by him begotten for her Jointure, and had issue male, and afterwards he and his wife levied a fine & suffered a Common recovery; the husband and wife died, & the issue male entered by force of the Statute of 11 H. 7. 20. this was no discontinuance to barre the issue male, but his entry was adjudged lawfull, and yet this case is out of the letter of that Statute; for he neither levied the fine, &c. being sole, nor with any other after taken husband, but it is by her selfe with her husband, that made the Jointure. Co. ibid. 365. b. No discontinuance. St. 11. H. 7. 20.

B A man is seised of lands in right of his wife, and they two levie a fine, and the conuses grants and renders the land to the husband

and wife in ſpecial taile, the remainder to the right heires of the wife, they have iſſue, the husband dieth, the wife taketh another husband, and they two levie a fine in fee, and the iſſue entreth, this is directly within the letter of the Statute of 11 H. 7. 20. And yet it is out of the meaning thereof, because the state of the land moved from the wife, so as it was the purchase of the husband in letter, and not in meaning.

Co. ibid. 381. b. 4 By the letter of the Statute of Gloceſter 6 E. 1. cap. 3. A fine levies by the husband alone of the wives land shall barre the heire, for the Statute ſeemes to intend all alienations except by fine, because it is there ſaid, whereof no fine is levied in the Kings Court; howbeit by the meaning of that Statute the heire shall not be barred, for ſuch a fine would worke a wrong to the wife, but the fine meant by the Statute is a fine levied by the husband and wife together, for ſuch a fine is lawfull and worketh no wrong, and a fine by the husband onely would worke the ſame miſchiefe, for which the Statute ordaines remedie, and therefore shall not barre the heire, though it be with warrantie, unleſſe the heire have aſſets by deſcent, &c. *Gloc. 3.* Diſcontinuance.

Co. l. 5. 5. b. The Lord *Montjoyes* caſe. 5 Donee in taile is reſtrained by a particular Act of parliament, quòd non faceret aliquid in nocumentum, &c. hæred. &c. niſi pro juntur. uxor, &c. reddend. verum & antiquum reddit, &c. Here, if the ancient reſervation was of gold, he cannot reſerve ſilver, if two farmes were anciently let to ſeveral tenants for ſeveral rents, he cannot let them both to one man for one intire rent, nor demiſe parcel of the farme rendring rent pro rata, nor reſerve it payable at two feaſts, where it was before payable at one: Howbeit, he may reſerve eight buſhels of wheat, inſtead of a quarter reſerved before; for they are all one in qualitie, value, and nature. Warranty no barre.

Co. l. 6. 65. b. Sir *Moile Finches* caſe. 6 The change of the name of a thing cannot alter the thing it ſelfe, but the new name may be uſed by the owner in conveyances, præcipes, &c. without prejudice; And therefore in Sir Moile Finches caſe in the 6. Rep. it was agreed, that Exceter-houſe in the Strand, and Dorſet-houſe in Fleet-ſtreet having then within three yeares before gained thoſe names, might be well enough known to their neighbours by the ſame names, and diſtinguiſhed from all other houſes, and might alſo by thoſe names be demanded in præcipes, &c. ſo in a præcipe brought of a Mannor in com. Bedd. by the name of the Mannor of Aſpley, whereas it had beene formerly and was ſtill called Aſpley guiſe; here, the tenant, after the view, demanded judgement of the writ, unto which the demandant ſaid, the Mannor put in view was alſo known by the name of Aſpley; and it was adjudged, that ſuch a name gotten by the knowledge of the Country is ſufficient, without the true and proper names; for in this ſenſe it is true: De nomine proprio non eſt curandum, dum in ſubſtantia non erratur, quia nomine mutabilia ſunt, res autem immobiles. Reſervation of rent.

41 E. 3. tit. Maint. de brief. 49. 8 H. 6. 32. Change of names.

Co. l. 9. 110. b. in *Meriel Treſhams* caſe. 7 Albeit Covin, of it ſelfe and ex vi termini, ought to be betwixt two, yet when it is coupled with fraud, which may be committed by one alone, the Court ſhall adjudge upon the matter, and not upon the Etimologie of the word; for, Plerunque dum proprietas verborum attenditur, ſenſus verborum amittitur. Covin.

Co. l. 11. 34. a. in *Alexander Powlters* caſe. 8 The Statute of 23 H. 8. 1. takes away Clergie from the Houſe-burner; the Statute of 1 E. 6. 12. gives the benefit of Clergie to all felons, ſave onely for murder, Poyſoning, Burglary, Robberie, Horſe-ſtealing, and Sacrilledge, ſo as House-burning being in this Statute caſus omiſſus, ſuch an offender ſeemeth thereby to be allowed his Clergie; Nevertheleſſe, becauſe the Statute of 25 H. 8. 3. takes away Clergie from the Houſe-burner, that ſtandeth mute, challengeth above House-burning

above 20, or answereth not directly, albeit the offence be committed in another County then where the offender is tried; And likewise because the Statute of 4. and 5. P. and M. 4. takes away Clergie from the accessories of that offence; it is adjudged, that according to the intention of the makers of the Statute of 1 E. 6. House-burning is includes within the meaning of that Act, although it is a penal Law and quite left out of the letter of the same Act.

Letters omitted.

9 In 17 El. Dyer, 342. a. The four first letters in the name and stile of H. 7. viz. H. R. A. F. (for Henricus Rex Angliæ, Franciæ, &c. were left out of his Letters patents made to Simon Digby, yet adjudged good; And in the 38 H. 6. 33. A count, in which it was alleadged, that T. W. resignavit, &c. in manus J. Episcopi, &c. & loci illius Ordinarii, And exception was taken, because it was not in manus Johannis Episcopi, seeing the Letter J. signified nothing: but yet the Count was adjudged good. Co. l. 9. 48. a. The Earl of *Shrewsburies* case. Co. l. 2. 17. a. *Lauds* case.

Waste.

10 The Statute of Gloucester cap. 5. which gives an action of waste against the Lessee for life or yeares (which lay not against them at the Common Law) speaketh of one that holdeth for terme of yeares in the Plural number, and yet it appeareth by Littleton Sect. 67. that although it be a penal Law, whereby treble damages and the place wasted shall be recovered, yet a tenant for halfe a yeare being within the same mischiefe, shall also be within the same remedie, although it be out of the letter of that Law. Co. Inst. 1. 54. b

11 Vide Pl. Co. 109. b. & sequent.

Indictment.

11 False latin shall not quash an Indictment or a Count; for albeit an original writ shall abate for false Latin (as it is holden in 9 H. 7. 16. 2 H. 4. 8. 44. E. 3, 18. 10 E. 3. 1.) yet Judicial writs or a fine shall not be impeached for false Latin, as is held in 9 E. 3. The same Law of an Indictment as præfato reginæ for præfatæ, mamilla for mammilla, &c. Vide supra 13, 4. Co. l. 4. 121. a. 4. in *Longs* case.

False Latine.

12 In the 14 of E. 3. the King grants licence to found in Oxford, an Hall under the name of the Hall of the Scholars of Oxford, the Founder calls it the Hall of the Queen: They present to a Church by the name of Provost, Fellowes and Scholars of the Colledge of the Queen in the Universitie of Oxford: The Incumbent devises the Rectorie, which they construe by the name of Provost, Fellowes, and Scholars of the Hall or Colledge of the Queen in the Universitie of Oxford: Notwithstanding these variances y presentation and confirmation are both good; for a small variance is not to purpose, if the description be such that no other can be intended, as Abbot Richerd grants by the name of Richard. Co. l. 11. 8. b. Doctor *Ayres* case.

Misnamer of a Colledge.

13 *Talis interpretatio fienda est, ut evitetur absurdum & inconvenions, & ne judicium sit illusorium.*

Pluralities of Benefices.

14 By the Statute of 31 H. 8. 13. if a Parson or Vicar having one benefice with cure of soules (being worth eight pounds per annum or above) take another, and be instituted and inducted in the possession of the same, (as the first shall be void; There, albeit the Statute saith plainly instituted and inducted, yet if he be onely instituted into it, he shall lose the first before induction; and this is in regard of the great inconveniences, that would ensue, if the first benefice should not be void by institution to the second by force of the said Act; for then one may be instituted to divers benefices with cure, the great charge whereof it were impossible for one to discharge, and yet none can be presented to any of them, which would be inconvenient. Co. l. 4. 79. a. *Digbies* case.

Co.l.4.81.b. Sir *Andrew Corbets* caſe.

2 Sir Andrew Corbet deviſeth ſome of his lands to Richard Corbet and others, untill 800 l. ſhall be levied and received out of the profits of them (beſides all charges) to be imployed for the preferment of his two daughters Marg. and Mary; Robert Corbet ſonne and heire conceals the will, enters into the lands, and enjoyes them five years and dies, after whoſe death (the will being diſcovered) Richard Corbet enters into the lands and raiſeth 640 l. and imployes them according to the will; but the queſtion here ariſing was, whether the profits, taken by Robert Corbet, and which the deviſees might have taken, ſhall be accounted parcel of the ſumme of 800 l. And in this caſe it was reſolved, that albeit the words be, untill the ſumme of 800 l. ſhall be levied, &c. yet it is as much in Law as if the words had been, ſhall or may be levied: And it was alſo held in caſe of a leaſe, or limitation of uſe, untill ſuch a ſumme ſhall be levied; that was as much to ſay as, untill ſuch a ſum may be levied, for otherwiſe great miſchief would inſue; becauſe in as much as he in reverſion or remainder ſhall not enter untill the ſum be levied, it ſhall be in the power of thoſe, who are appointed to levie it, to deferre the levying of it, and ſo to exclude him in the reverſion or remainder from taking the profits of the land for ever which would be inconvenient. Deviſe of Profits to raiſe a ſumme.

Co.l.4.90.a. *Druries* caſe.

3 If a Baron retaines two Chaplains according to the Statute of 21 H.8.13. and they purchaſe diſpenſation, and are advanced according to the Statute; Here, if the Baron diſcharge one of them from his ſervice; he cannot retaine another during the life of the Chaplain diſcharged; for by that meanes he may advance as many Chaplains as he will, even without number, by which the Statute would be defrauded. A like caſe to this was adjudged in C. B. 28 El. and after affirmed in B. R. in a writ of error. Chaplains.

Co.l.5.10.a. *Hunſteads* caſe

2 A feme ſole makes a leaſe at will, and after takes Baron; Here, the will is not determined by the intermariage; for albeit the feme by taking the baron hath ſubmitted her ſelfe to the will of her husband as her head; yet in as much as it may be prejudicial to the husband to have the leaſe determine (for then he ſhould loſe the rent payable at the next rent day after the mariage) and becauſe it will rather tend to the benefit, than to the prejudice of the feme, if the leaſe continue; And alſo for that it may be a great prejudice to husbands who marie women, that have tenants at will, for the loſſe of their rents: for theſe cauſes it was reſolved, that without expreſſe matter done by the husband after the mariage to determine the will, it ſhall not determine. Tenant at will

Co.l.1.68. The Lord *Cheyneyes* caſe.

5 Sir Th. Cheyney 1 El. deviſeth, &c. to H. his ſonne and the heires male of his bodie, the remainder to Th. Ch. of D. and the heires male of his bodie, with condition, that he or they or any of them ſhall not diſcontinue, &c. the queſtion was whether T. Ch. ſhould be received to prove by witneſſes, that it was the intent of the diviſor to include his ſonne within theſe words he or they; And it was reſolved by Wray and Anderſon upon conference with other Judges, that he ſhall not; for the conſtruction of wills ought to be collected out of the words of the will in writing and not by collateral averment without, becauſe that would be ſubject to much inconvenience, in as much as it would not then be poſſible for any man to know by the written words of the will, what Conſtruction to make, or what advice to give, when whatſoever ſhall be in that caſe done may be controuled by collateral averments out the will. Deviſe.

21 H.6.41. Co.Inſt.1.175. b.

6 If a man be diſſeiſed by two and releaſeth to one of them, he ſhall hold his Companion out; but if tenant for life be diſſeiſed by two and he releaſeth to one of them, this ſhall enure to them both, for Tranſmutation of eſtates.

for he to whom the releafe is made hath a longer eſtate than he that releaſeth, and therefore the releaſe cannot enure to him alone to hold out his Companion, for then ſhould the releaſe enure by way of entry and grant of his eſtate, and (conſequently) the diſſeiſor to whom the releaſe is made ſhould become tenant for life and the reverſion revelled in the Leſſor, which ſtrange tranſmutation and change of eſtates in this caſe the Law will not ſuffer. Deſcent 29. 13 E. 4.

The like. 7 If a man grant lands to A. in fee, upon condition that if he alien in fee, his eſtate ſhall ceaſe and be voide, and that immediately from thenceforth the eſtate of the land ſhall remaine to B. and his heires; here the eſtate to A. is good, and he may lawfully alien notwithſtanding the condition; for his eſtate being an eſtate of Inheritance in lands and tenements, it cannot ceaſe or be voide before it be defeated by entry, and then if this remainder ſhould be good it muſt give an entry upon the alienee unto him that had no right before, which would be inconvenient and againſt the expreſſe rule of Law, becauſe an entry cannot be given to a ſtranger to avoide a voidable act, as appeares by Littleton in his Chapter of Conditions. Litt. l. 720, 722. Co. Inſt. 1. 377. Juſtice *Richels* Caſe, Temps R. 2.

An Infants will. 8 Becauſe Littleton ſaith (Sect 123) that the Guardian in Soccage ſhall render an account of the mariage money to the heire or his executors; Here, from this word executors ſome have collected, that an Infant of the age of 14 may make a will; but the meaning of Littleton in that place is, that if after the mariage he accompliſh the age of 18 yeares, he may then make a will and conſtitute executors to adminiſter his goods and chattels; for at that age he hath power by the Law to make a will, and theſe words are to be underſtood as they may ſtand with Law and Reaſon. Co. Inſt. 1. 89. b

Subſequent ſtatutes, expounded by the equity of former. 9 The Statute of Gloceſter in 6 E. 1. cap. 3. ordaines, that where the tenant by the Curteſie aliens his wives Inheritance with warrantie, if aſſets deſcend to the heire, he ſhall be barred for the value of the Inheritance ſo deſcended, and if lands after deſcend, that then the tenant ſhall recover againſt the heire of the ſeiſin of his mother, viz. out of the reſidue of his mothers lands ſo much as the aſſets afterwards deſcended ſhall amount unto; Here, albeit at the making of the ſaid Act (being in 6 E. 1.) there were no entailed lands (for all Inheritance was then (viz. before Weſtm. 2. being 13 E. 1.) fee ſimple abſolute or conditional) yet entailed lands are ſince taken to be within the equitie of the ſaid Act of Gloceſter, but not to retaine, or recover (as in caſe of fee ſimple lands) the lands entailed, but onely the lands which ſhould ſo deſcend; becauſe otherwiſe there would be occaſion of new ſuits and contention, which would be inconvenient; for if the tenant after aſſets deſcended might retaine or recover the lands entailed, then if the aſſets were alienedy the iſſues inheritable to the eſtate taile might by writ of Formedon in Deſcender recover the entailed lands againe, which would beget a new ſuit and no way anſwer the intention of the ſaid Act, being indeed a good proviſion for fee ſimple lands, but not for lands entailed without ſuch a Conſtruction by equity, as aforeſaid; And therefore in caſe of entailed lands ſo aliened with warrantie, the tenant ſhall have a Scire facias out of the rolles of the Juſtices, before whom the ſuit depends, to recover the lands deſcended according to the proviſion of the ſaid Act of Gloceſter, which prevents the aforeſaid inconvenience, and in juſt and proportionable equity agrees with the caſe of Fee ſimple lands, and the Intention of the ſame Act. Vide infrà 178. 22. and 38. 5. Co. l. 8. 52. b. 4. in *Syms* caſe. Pl. Co. 140. in *Fulmerſtons* caſe.

Interpretation of ſtatutes. 10 For the ſure and true interpretation of all ſtatutes in general (be they penal or beneficial, reſtrictive or inlarging of the Common Law, Co. l. 3. 7. b. 3. in *Heydons* caſe.

Law) four things are to be conſidered: 1 What the Common Law was before the making of the Statute: 2 What was the miſchief and defect, for which the Common Law did not provide: 3 What remedie the Parliament hath reſolved and appointed to cure that diſeaſe of the Common-wealth: 4 The true reaſon of the remedie: And then it is alwayes the office of the Judges to make ſuch conſtruction, as may repreſſe the miſchief, and advance the remedie, and alſo to ſuppreſſe ſuch ſubtile inventions and evaſions, as may continue the miſchief, & pro privato commodo; and to adde force and life to the cure and remedie, according to the true intention of the makers of the Act pro bono publico: And upon this ground in Heydons caſe in the
Co.l.3.8.a.3. 3 Report the ſtatute of 31 H. 8. cap. 13. of Monaſteries was by all the Barons of the Exchequer adjudged (by the generall words thereof) to extend to Copiholds or Cuſtomarie eſtates; and by them this Rule was then alſo agreed, That when an Act of Parliament alters the ſervice, tenure, intereſt of the land, or other thing in prejudice of the Lord, or of the Cuſtome of the Mannor, or in prejudice of the tenant, there the generall words of ſuch an Act ſhall not extend to Copiholds; but when the Act is generally made for the common good and no prejudice may accrue by reaſon of the alteration of any intereſt, ſervice, tenure, or cuſtome of the Mannor: In ſuch caſe many times Copihold and Cuſtomarie eſtates are within the generall purview of ſuch Acts.

16 *Quoties in verbis nulla eſt ambiguitas, ibi nulla expoſitio contra verba expreſſa fienda eſt.*

Co.Inſt.1.147 a. Co.l.7.24.a. *Buts* caſe. 1 If a rent be granted out of the Mannor of Dale, and the grantor grant over, that if the rent be behind, the grantee ſhall diſtraine for the ſame in the Mannor of Sale, this is no grant of rent, only but a penaltie in the Mannor of Sale, & one reaſon thereof is, becauſe the Law néeds not to make conſtruction, that this ſhall amount to a grant of a rent, for here the rent is expreſſly granted to be iſſuing out of the Mannor of Dale, and the parties have expreſſly limited, out of what land the rent ſhall iſſue, and upon what land the diſtreſſe ſhall be taken, and the Law will not make an expoſition againſt the expreſſe words and intention of the parties, when this way ſtands with the Rule of Law. Rent.

Co.l.2 55.a. *Bucklers* caſe. 2 A grants land to B. Habendum tenementa prædicta from Chriſtmas next for life; Here, this grant is void, for an eſtate of freehold cannot commence in futuro, and the Law will make conſtruction upon the whole grant; And therefore albeit the habendum be void and ſo (in effect) is no habendum (and thereupon the eſtate ſhould paſſe by the premiſſes as in caſe of repugnancie or the like) yet here no eſtate ſhall paſſe by implication of Law againſt the expreſſe limitation of the partie; although his limitation be void. Grant in futuro.

Co.l.5.118. *Edriches* caſe. 3 A ſeiſed of Land in fée, grants a rent out of it with clauſe of diſtreſſe to B. for the life of C. and dies, the heire lets the land (thus charged) to D. for life, the remainder to E. in fée, the rent is behind for divers yeares in the life of D. who dies, and alſo C. B. diſtrains him in the remainder for all the arrearages incurred in the life of D. In this caſe, he in the remainder ſhall be charged with them by the laſt branch of the Statute of 32 H. 8. 37. by which an action of debt is given to the tenant pur auter vie after the death of Ceſtuy que vie againſt the tenant in demeſne (who ought to have paid the rent when it was firſt due) and againſt his executors and adminiſtrators; and alſo Rent.

that

that he shall distraine for the same arrearages upon such lands, &c. out of which the said rents &c. are issuing in such manner and forme as he ought or might have done if Cestyque vie had been alive, Here, (I say) the latter part of this branch doth expresly charge him in the remainder with the payment of the arrearages: And the Judges in that case said, that they ought not to make any interpretation against the expresse letter of the Statute; for nothing can so well expresse the intent of the makers of an Act, as the direct words themselves (for index animi sermo) and it will be dangerous to give libertie to make construction in any case again the the expresse words, when the intent of the makers appeares not to the contrarie, and when no inconvenience may happen upon it: And therefore in such cases, A verbis legis non est recedendum.

Devise. 4 Land was devised to A. for life, the remainder to B. and the heires of his bodie, the remainder to C. and his wife and after their discease to their children, C. and his wife having then issue a sonne and a daughter: And after the division dies, also A. dies and B. dies without issue, C. also and his wife die, and the sonne hath issue a daughter and dies; Here, the question was, whether the daughter of the sonne should have the land, or no: And it was resolved, that she should not, because in this case at the Common Law C. and his wife has but an estate for life with remainder to their children for life, and then the cause or reason why they by the will should have an estate taile is onely grounded upon the intent of the division: Howbeit, it was resolved, that such an intent ought to be manifest and certaine, and not obscure and doubtfull, because it will not then admit of any strained construction farther than the words themselves do import by a proper and genuine interpretation according to the Rules of Law. Co. l. 6. 6. b. *Wildes* case:

Devise. 5 If I devise lands to my sonne Thomas to hold to him and the heires male of his bodie for the terme of 500 yeares, his heire shall not have them but his executors, for this terme is but a chattel and cannot be intailed, and such a devisee may alien the terme, if he please: And Cook Chief Justice held, that such a devise is but an estate for years, because it is so in expresse words devised, and that (in this case) against expresse words, no inference or interpretation shall be admitted. Co. l. 10. 87. a. *Leonard Lawes* Case. Dyer 7. pl. 8. 28 H. 8.

Tales. 6 Tales de circumstantibus shall not be granted in an Assize by the Statute of 35 H. 8. 6. because by the expresse words of that Act they are onely grantable in every writ of Habeas corpora or distringas with Nisi prius, and no exposition can in this case be made against expresse words; for viperima est ista expositio quæ corrodit ventrem textus. Co. l. 10. 105. a. *Benhawdes* Case.

Waste. 7 If seme tenant for life take husband, who makes waste; and the seme dies; Here, the husband is not punishable for that waste; because the Statute of Glocest. 6 E. 1. cap. 5. is thus recited in the writ of waste, Quare cum de communi; &c. provisum sit, quòd non liceat alicui vastum, &c. facere de terris, &c. sibi demissis ad terminum vitæ vel annorum, &c. So that the land being not demised to the husband, but he holding it onely for her life and in her right, he shall not be chargeable for waste after the death of the wife, by the expresse words of the Act, as it is recited in that writ. Co. l. 5. 75. b. *Cliftons* Case.

Devise. 8 A devise of land by will is good without Probat, because the Statute of wills ordaines onely that it shall be in writting, and enjoynes no Probat; and therefore if it be in writting and proved by witnesses, it is good without Probat. Dyer 53. b. 11. 34 H. 8.

Taile of the King. 9 If tenant in taile of the gift of the King, the reversion to the King expectant, is disseised, and the disseisor levie a fine, and five yeares passe, this shall barre the estat taile, notwithstanding the Co. Inst. part 1. 373. a.

Proviſo in the Statute of the 32 H. 8. cap. 36. ſo likewiſe if a collateral anceſtor of the Donée releaſe with warrantie, and the Donée ſuffer the warrantie to deſcend without entry made in the life of the anceſtor, this alſo ſhall binde the tenant in taile, becauſe the words of that Statute are, had, done, or ſuffered by or againſt any ſuch tenant in taile; And in this caſe he is not partie, or privie to any act either done or ſuffered by or againſt him.

17 *Maledicta eſt expoſitio, quæ corrumpit textum.*

Co. l. 2. 24. a. *Baldwins* Caſe

1 The Earl of Cumberland demiſes land to Anne and to one Anthony Baldwin her ſonne and to the heires of the ſaid Anthony, Habendum to them from the date for 99 yeares; Here albeit heires are mentioned in the premiſſes, yet is not the Habendum repugnant unto them, but they have a joynt eſtate for yeares, for it cannot be repugnant as to Anthony, and yet good to Anne: Viperima eſt iſta expoſitio, quæ corrodit ventrem textus. Demiſes.

Co. l. 11. 70. a. *Magd.* Colledge Caſe. *Grants to the King.* Stat. 13 El. 10.

2 Grants to the King are reſtrained by the generall words of 13 El. 10. for the words are, to any perſon or perſons, bodie politique or corporate, and the King is a perſon, as it is ſaid in 10 H. 7. 18. and a bodie politique, as appears in Plowd. fol. 213 & 234. Now therefore if the King be clearely included in the letter, if he ſhall be excluded out of the Act, it muſt be by conſtruction of Law, and (in this caſe) the Law will make no ſuch conſtruction; for the Queen, Lords, and Commons, who made the Act, have adjudged (as in the preamble appears) that long leaſes made by Colledges, &c. are unreaſonable and againſt reaſon (much more eſtates in fee ſimple.) And the Law, which is the perfection of reaſon, will never expound the words of that Act againſt reaſon, for maledicta eſt expoſitio, &c. Grants to the King of Church Livings.

18 *Nimia ſubtilitas in lege reprobatur.*

Co. l. 5. 121. a. *Longs* caſe.

1 Exception was taken to an Indictment, becauſe it was ſaid to be taken coram W. S. Coronatore Dominæ Reginæ infra libertatem dictæ Dominæ reginæ villæ ſuæ de Coſſam prædict. ſuper viſum corporis, &c. and doth not alleadge to what places the ſaid libertie doth extend, or whether part or any of the towne of Coſſam be within the libertie, and ſo it did not appear, that the Coroner has any Juriſdiction in the place, where the inquiſition was taken, nor where the murder was committed, nor where the dead bodie lay, for all is alleadged by the indictment to be at Coſſam: Howbeit, the indictment was adjudged ſufficient notwithſtanding this exception; for although it be true (by the Rule of Law) that indictments ought to be certaine, yet it is to be obſerved, that there are three ſorts of certainties, 1 To a common intent, 2 To a certain intent in generall, 3 To a certain intent to each particular; The firſt ſufficeth in barres, which are to defend and excuſe the partie; the ſecond is required in indictments, counts, replications, &c. becauſe they are to excuſe or charge the partie; the third is reſected in Law, as too nice and curious, for Talis certitudo certitudinem confundit: And in this preſent caſe the indictment is certaine enough in generall, viz. that Coſſam is within the libertie of Coſſam: but to imagine that the libertie may extend out of the town, and yet the town it ſelf to be out of the libertie, is a captious and ſtrained intendment, which the Law doth not allow. Indictment.

2 In

Misnomer.

2 In a conveyance of lands in Kent certain lands lying in Beamston were excepted by the name of the Manno͛ of Beamston, whereas it had (indeed) fo͛merly been a Manno͛ but was none at that time, yet was it adjudged to be well excepted: And in the Argument of this point it was said, that the Law favours not advantages of misnaming, otherwise then as the strict rule of Law requires, no not in writs, which may be abated and new ones purchased, much lesse in grants o͛ other conveyances, in which case they cannot have new ones; And therefo͛e if two be joyned in a writ, the one shall not plead the Misnamer of the other, as it is agreed in 14 H. 6. 3. In an action against baron and feme, albeit they are one person in Law, yet the one shall not plead the Misnomer of the other, so in trespasse in Holdernesse at W. the defendant pleads (in respect of Misnomer) that it was neither Town, Hamlet, o͛ place known, &c. the Plaintiff replyeth, it was without shewing in certaine, either that it was a Town, hamlet, o͛ place known, And all this in detestation of nice and dilato͛is exceptions.

Co. l. 6. 64. b. Sir *Moyle Finches* case.

33 E. 3. Mainten. de briefe 63.

Nice constructions.

3 Cook Chief Justice of the C. Pl. in the Earle of Rutlands case in 8 Rep. 6 Jac. complaines together with the other Judges of the same Court, that then of late time divers nice and strained constructions of Letters Patents had been made, and many of them upon slight grounds had been brought in question, with purpose to subvert the fo͛ce and effect of them, which practice (said they) did much tend to the dishonour of the King and wo͛ng of the subject and was cleerly against the true reason and ancient Rule of Law, as did manifestly appeare in all their Books, because such nice and captious pretence of certainty, confounds true and legal certainty.

Co. l. 8. 56. b. The Earl of *Rutlands* case.

Indictment.

4 In Mackallies case in the 9 Rep. exception was taken to the indictment, which said, in Curia dicti Domini Regis in computatorio suo scituato in Parochia sancti Michaelis in Wood-street London, and did not shew in what Ward the said Parish was; but it was not allowed; fo͛ (as it was holden in 7 H. 6. 36. b.) every Ward in London is as an hundred in the Country, and every Parish in London as a town in the hundred, and it is not necessarie to declare in what hundred a town is, neither yet in what Ward a Parish is; And therefo͛e such nicety is to be avoided as needlesse, Vide plus ibidem.

Co. l. 9. 66. b. *Mackallies* case.

Exception to a Charter, &c.

5 Exception was taken against the confirmation of the Charter of Queens College in Oxford, ann. 8 Jac. because it was sub nomine Aulæ Reginæ, whereas the Charter it selfe was Aulæ Scholarium Reginæ but not allowed: So in 17 E. 3. 48. one was named Burgensis de novo castro super Tinam, and the exception was taken, that a Burgesse ought to be of a certain Town and not of a Castle, but it was not allowed: fo͛ the ancient Sages of the Law did alwayes reject such niceties concerning appellations and names, when the thing intended might be thereby well enough known and distinguished.

Co. l. 11. 20. a. & 22. a. Doctor *Ayraye* case.

Exception to a Charter, &c.

III Maximes of Reaſon: taken out of LOGICKE.

19 *Ceſſante cauſa ceſſat effectus.*

The Corporation failing, the land reverts in the Donor.

IF Land holden of I. S. be given to an Abbot and his ſucceſſors (or to any other Corporation) In this caſe if the Abbot and all the Covent die ſo that the bodie Politique is diſſolved, the Donor ſhall have againe the land and not the Lord by Eſcheate; becauſe in the caſe of a bodie Politique, the fée ſimple is veſted in their politique capacity, created by the policy of man, and therefore the Law doth annex a condition in Law to every ſuch gift and grant, that if ſuch bodie Politique be diſſolved, the Donor or Grantor ſhall re-enter; for that the cauſe of the gift or grant faileth: But no ſuch condition is annexed to the eſtate in fée ſimple veſted in any man in his natural capacity, but in caſe where the Donor or Feoffor reſerveth to him a tenure, and then the Law doth imply a condition in Law by way of Eſcheate. Co. Inſt. pars 1 13.b.2.

Wedlock ceaſing, the Dower ceaſeth.

2 The wife ſhall be endowed of the lands, &c. of her husband, if the marriage continue till his death; but if the husband and wife be divorced à vinculo matrimonii, as in caſe of præcontract, conſanguinity, affinity or the like (but not à menſa & thoro onely, as for adultery) the Dower ceaſeth, For, ubi nullum matrimonium, ibi nulla dos. See Dyer 13. a. Co. ibid. 32.a.4

The tenure ended, the diſtreſs ceaſeth.

3 For the rent due the laſt day of the terme, the leſſor cannot diſtraine, becauſe the terme is ended; and therefore ſome uſe to reſerve the laſt halfe yeares rent at the feaſt of St. John Baptiſt before the end of the terme; ſo as, if the rent be not then paid, he may diſtraine betwéen that and Michaelmas following. Co. ibid. 47.b.3

The tenure ended, the eſtople ceaſeth.

4 If a man takes a leaſe for years of his own land by déed indented, the eſtopel doth not continue after the terme ended; for by making of the leaſe the eſtopel doth grow, and conſequently by the end of the leaſe the eſtopel determines; and that part of the Indenture which belonged to the Leſſee, doth after the terme ended, belong Co. ibid. 47.b.4 m. 31. & 32. Eliz. *Londons* caſe. Co. l. 4. 54. a. b.

to

to the Lessor, which should not be, if the estopel continues. Vide 40. 32.

Co.ibid.76.a.1

5 If after the Lord hath the wardship of the bodie and land, the Lord doth release to the Infant his right in the Seigniory, or the Seigniory descendeth to the infant, he shall be out of ward both for the body and land, for he was in ward in respect he was not able to do those services which he ought to do to his Lord, which now are extinct, and Cessante causa, cessat causatum: And Littleton saith, that tenure by Knight-service draweth unto it ward, mariage &c. So as there must of necessity be a tenure continuing: So likewise if the Conusor in a Statute merchant be in execution and his land also, and the Conusée release to him all debts, this shall discharge the execution; For the debt was the cause of the execution, and of the continuance of it, till the debt be satisfied, and therefore the discharge of the debt, which is the cause, dischargeth the execution, which is the effect.

The Seigniory extinct, the Wardship ceaseth.

Upon release of all debts, the Land in execution is also released.

Co.ibid.76.b.3

6 If the tenant makes a feofment in fée of lands holden by Knights-service, to the use of the feoffee and his heires, untill the feoffor pay unto the feoffée or his heires an hundred pounds at a time and place limited; The feoffée dieth, his heire within age, the Lord shall have the wardship of the body and lands of the heire of the feoffee, but it shall be conditionally; for he cannot have a more absolute interest in the wardship, than the heire hath in the tenancie: Therefore if the feoffor pay the money at the day and place, and entreth into the land, in this case the wardship both of the body and lands is divested; because the Lord hath no absolute interest in either of them, but that interest, which he hath, doth depend upon the performance or not performance of the condition.

The town performed, the Wardship ceaseth.

Litt.§ 103. Co.ibid.78.b.4

7 Littleton tells us, that by the Statute of West. 1. cap. 22. If an heire female be within the age of 14 yeares, and not married at the time of the death of her ancestor, then the Lord shall have the ward of the land holden of him, untill her age of 16 yeares, to the end within those two last years he may tender her convenient marriage: yet (in this case) if the Lord before the age of 14 granteth over the wardship of the bodie, the grantee thereof cannot enjoy the benefit of the two yeares, because he cannot hold the land over; and the Lord, which hath the wardship of the land onely, shall also lose the benefit of the two yeares, because he hath the lands onely, and cannot tender any mariage; Therefore (in this case) the heire female shall enter into her land at her age of 14 yeares: So if a tenant holdeth of one Lord by prioritie, and of another by posteriority and dieth, his heire female within the age of 14 years, the Lord by posteriority shall have the lands but until her age of 14 yeares, because the mariage belongeth not to him: Also, if the Lord marieth the heire female within the two yeares, her husband and she shall presently after the mariage enter into the lands: For, cessante causa, cessat effectus; & cessante ratione legis, cessat beneficium legis.

The Wardship of the body severed from the Land, cannot have the benefit of the two years after 14.

Co.ibid.102.b. 8.202.b.1. Co.ibid.103.a. 3. Litt.Sect.147.

8 Where there is Homage Ancestrel betwixt an Abbot and Covent, and their tenant, If that body be once dissolved, though a new be founded of the same name, and all the possessions be granted to them, yet the Homage Ancestrel is gone. So it is likewise, if a man in his natural capacity holds by Homage Ancestrel, and sells the land to another, although he repurchase the land again, yet is the Homage Ancestrel dissolved.

Homage ancestrel after alienation, gone.

Co.ibid.104. a.4.

9 If Homage be due to be done by the tenant, if the tenant alien the land to another, the Alienor cannot be compelled to do Homage.

The Land being alienated, the Homage is gone.

10 The

The delay being pardoned, the amerciament is alſo gone.

10 The cauſe of an amerciament in a plea reall, perſonall or mixt (where the King is to have no fine) is for that the tenant or defendant ought to render the demand (as he is commanded by the Kings writ) the firſt day: which if he do, he ſhall not be amerced; ſo that for the delay, that the tenant or defendant doth uſe, he ſhall be amerced: And albeit the amerciament cannot be impoſed, nor the King fully intitled thereunto, untill judgement be given, becauſe by the judgement the wrong is diſcerned, yet a pardon before judgment, ſhall, after Judgment given, diſcharge the partie, becauſe the originall cauſe, viz. the delay, &c. is pardoned. Co. Inſt. pars 1. 126. b. 4. a Plowd. 401. *Coles* caſe. 37 H. 6 21. Co. l. 5. 49. *Vaughans* Caſe.

A wife after coverture, a Nieſe again.

11 If a Nieſe marry a free-man, ſhe is priviledged during the coverture, but not abſolutely enfranchiſed; for if her husband die ſhe is a Nieſe again. Co. Inſt. pars 1. 136. b. 2. 137. b. 3.

No Juror after his land gone.

12 If a Juror (after his returne) ſelleth away his land, or if he, for whoſe life, or his wife in whoſe right he holdeth it dies, or if an entry be made upon his land for a condition broken, ſo as his free-hold is determined, in any of theſe caſes he may be challenged for inſufficiency of free-hold: for when his land is gone, his feare to offend, to have his lands waſted, and the like, &c. (which is one of the reaſons of Law) is alſo taken away. Co. ibid. 157. a. 1. & 2. 271. b. 2.

No damage feſant out of the ſoil.

13 If a man come to diſtrain for Damage feſant, and ſee the beaſts in his ſoile, and the owner chaſe them out on purpoſe before the diſtreſſe taken, the owner of the ſoile cannot then diſtraine them, and if he doth, the owner of the cattle may reſcue them; for the beaſts muſt be damage feſant at the time of the diſtreſſe. Co. ibid. 161. a. 3. Co. l. 9. 22. b. 4. Caſe of *Avowrie*

Where coparceners ſhall join and relieve not.

14 If one coparcener die, her part ſhall deſcend to her iſſue, and one præcipe ſhall lie againſt them, and this is propter unitatem juris, derived from one common Anceſtor; ſo, if a man hath iſſue two daughters, and is diſſeiſed, and the daughters have iſſue and die, the iſſues ſhall joyn in a præcipe; likewiſe, the iſſues of two coparceners, which are in by ſeverall deſcents, being diſſeiſed, ſhall joyne in an Aſſiſe: Howbeit, in the ſame caſe, if the two daughters had been actually ſeiſed, and had been diſſeiſed, after their deceaſes the iſſues ſhall not joyn: becauſe (as to that purpoſe) the unitas juris is ſevered; for now, ſeverall rights deſcended to them from ſeverall Anceſtors; and yet when they have ſeverally recovered, they are coparceners againe, and one præcipe lyeth againſt them, and releaſe made by one of them to the other is good. Co. ibid. 164. a. 3.

Frankmariage *Hotchpot.*

15 If lands given in frank-mariage be *impleaded*, the tenant ſhall not have ayde againſt the other parcener; but if ſhe put the land into Hotchpot, ſhe ſhall have it; for, then the lands are become as other lands, which deſcended from the common Anceſtor. Co. ibid. 177. b. 2.

Preſcription or Cuſtome extinct by interruption.

16 If tenant by homage anceſtrell maketh a feoffment in fee upon Condition, and entreth for the Condition broken, it ſhall be never holden by homage Anceſtrell again: ſo it is, if a Copihold eſcheat, and the Lord maketh a feoffment in fee upon Condition, and entreth for the condition broken, it ſhall never be Copihold again; becauſe (in both theſe caſes) the cuſtome or preſcription (which ſupportes, and was the cauſe of the tenure) is interrupted, and that being once broken, is become remedileſſe. Co. ibid. 202. b. 1.

The land evicted, the Annuity is gone. The mariage failing, the land reveſts.

17 If a man grant an annuitty ppr una acra terræ, if the acre of land be evicted by an elder title, the annuity ſhall ceaſe; ſo if it be pro decimis, and the grantee be diſturbed, or pro conſilio, or quòd præſtaret conſilium, and the grantee refuſe to give counſel, the annuity ſhall in theſe caſes ceaſe; likewiſe, if a woman give lands to a man and his heires cauſa matrimonij prælocuti, in this caſe if the man refuſe to marry her, ſhe ſhall have the land againe to her and her heires; but it is otherwiſe in caſe of a man. Co. ibid. 264. a. 2.

18 If

Co.ibid.238. a 4. 18 If a diſſeiſor make a gift in taile, and the Donee diſcontinueth the fée, and after diſſeiſe the diſcontinuee, and dieth ſeiſed, this diſcent ſhall not take away the entry of the diſeiſée; For the diſcent of the Fée ſimple is vaniſhed and gone by the Remitter, And albeit the iſſue be in by force of the eſtate taile, yet the Donée died not ſeiſed of that eſtate, and of neceſſity there muſt be a dying ſeiſed. A dying ſeiſed, and yet no deſcent to take, &c.

Co.ibid.239.a. 2. 19 When the degrées are paſt ſo as a writ of Entry in the Poſt doth lye, yet by event it may be brought within the degrées again, as if the diſſeiſor enfeoffe A. who enfeoffes B. who enfeoffes C. or if the diſſeiſor die ſeiſed, and the land deſcends to A. and from him to B. and from him to C. Now are the degrées paſt, and yet if C. enfeoffe A. or B. now is it brought within the degrées again. A writ out of the degrees may be reduced.

Co.ibid.242,b. 1. 20 If the eldeſt ſonne hath iſſue and dieth, and after his deceaſe the younger ſonne or his heire entreth, and many deſcents caſt in his line; yet may the heires of the eldeſt ſonne enter, in reſpect of the privity of bloud, and of the ſame claime by one title; But if the younger ſonne make a feoffment in fée, and the feoffée dies ſeiſed, that diſcent ſhall take away the entry of the eldeſt, in reſpect that the privity of bloud faileth. Adeſcent when privity of bloud faileth.

Co.ibid.285.a. 4. 21 If an action of waſt be brought by Baron and feme in remainder in ſpecial taile, and (hanging the writ) the wife dieth without iſſue: the writ ſhall abate; becauſe every kind of action of waſt muſt be ad exhæredationem. Death voids the action.

Co.ibid.291.a. 4. Execut.7. 22 If the bodie of a man be taken in execution upon a Ca. ſa. and the Plaintiffe releaſeth all actions, yet ſhall he ſtill remaine in execution; but if he releaſe all debts, duties or judgements, he is to be diſcharged of the execution; becauſe the debt, or the dutie, or the judgement (which is the cauſe of the execution) is diſcharged. Releaſe of debt excuſeth execution.

Co.ibid 312 a. 1. 23 The Reaſon that Littleton giveth of the difference betwéen a rent-ſervice and a rent-charge is, for that in rent-ſervice the avowry ſhall allwayes be made upon the perſon, but in rent-charge never upon the perſon, but upon the Land charged; Now here it may be ſaid, that this reaſon is taken away by the Statute of 21 H. 8. 19. For by that Statute the Lord néeds not avow for any rent or ſervice upon any perſon in certaine, and then by Littletons reaſon there néeds no privity to the attornment of a Seigniory, for (ſay they) Ceſſante cauſa & ratione legis, ceſſat lex; As at the Common Law no aide was grantable of a ſtranger to an Avowrie; becauſe the Avowrie was made of a certaine perſon; but now the Avowrie being made by the ſaid Act of 21 H. 8. upon no perſon; therefore the reaſon of the Law being changed, the Law it ſelfe is alſo changed, and conſequently in an Avowrie, according to that Act, aid ſhall be granted of any man, and the like in many other caſes; which caſe is granted to be good Law: But albeit the Lord (as hath béen ſaid) may take benefit of the Statute, yet may he avow ſtill at his election upon the perſon of his tenant; and albeit the manner of the Avowrie be altered, yet the privity (which is the true cauſe of the ſaid difference) remaineth as to an Attornment. Avowry for a rent ſervice upon the perſon.

Litt.l.§ 568. Co.ibid.316.a. 3. 24 If the reverſion of Leſſée for life be granted, and Leſſée for life aſſigne over his eſtate, the Leſſée cannot attorne, but the attornment of the Aſſignée is good, becauſe (as Littleton ſaith) it behoveth that the tenant of the land do attorne, and after the aſſignement there is no tenure or attendance, &c. betwéen the Leſſée and him in reverſion: ſo likewiſe if Leſſée for life aſſigneth over his eſtate upon condition, he having nothing in him but a condition ſhall not attorne, but the aſſignée may attorne, becauſe he is tenant of the land. Upon alienation the grantee ſhall attorn.

25 Tenant

The assignee of tenant by possession shall attorn.

25 Tenant in taile after possibility of issue extinct shall not be compelled to attorne, for the inheritance, which was once in him: but his assignee shall be compelled to attorne, because then that privilege is lost, the assignee having in him onely a bare estate for life. Co. ibid. 316. a. 4.

Release of quarrels is release of Act.

26 Querela (being derived à quærendo) properly concerneth personal actions, or mixt at the highest; for the Plaintiff in them is called Querens; and yet if a man release all quarrels, it is as beneficial as all actions; for by it all actions both real and personal are released; because by the release of all quarrels all causes of actions are released, albeit no action be then depending for the same. Co. ibid. 292. a. 3.

Where the estate is defeasible, the tenant is not compellable to attorn.

27 It is a general rule, that when the grant by fine is defeasible, there the tenant shall not be compelled to attorne; As if an infant being seised of a reversion, levie a fine thereof, this is defeasible by writ of error during his minority; and therefore in this case the tenant shall not be compelled to attorne; so likewise if before the Statutes of 4 H. 7. 24. and 32 H. 8. 36. a tenant in taile had levied a fine, the tenant could not have been compelled to attorne, because it was defeasible by the issue in taile; But those Statutes have given a farther strength to fines to barre the issue in taile; and therefore the reason of the Common Law being thereby taken away, the tenant in this case shall be compelled to attorne, as it was adjudged in Justice Windhams case. Co. ibid. 318. a. 4. 38 H. 6. 24. Co. lib. 3. 86.

A discontinuance reduced.

28 A. maketh a gift in taile to B. who maketh a gift in taile to C. C. maketh a feoffment in fee, and dieth without issue, B. hath issue and dieth, the issue of B. shall enter; for albeit the feoffment of C. did discontinue the reversion of the fee simple, which B. had gained upon the estate taile made to C. yet could it not discontinue the right of entail, which B. had, that being discontinued before: And therefore when C. dies without issue, then did the discontinuance of the estate tail of B. (which passed by his livery) cease, and consequently the entry of the issue of B. is lawfull. Co. Inst. pars 1 327. b. 3.

Discontinuance determined, the issue in tail may enter.

29 Tenant in taile makes a lease for the life of the Lessee, and after sels the reversion to a stranger, the tenant for life dies, the grantee of the reversion enters in the life of the tenant in taile, this as a discontinuance in fee, and here if the tenant in taile die, his issue cannot enter, but is put to his Formedon, because the estate was executed in the grantee of the reversion in the life of the tenant in tail: but in this case if the lessee, for life had survived the tenant in taile, the entry of the issue had been lawfull; because by the death of the Lessee the discontinuance was determined, and consequently the grant made of the reversion, gained upon that discontinuance, is void also. Litt. Sect. 632. Co. ibid. 333. a. 2.

Discontinuance defeated.

30 When estates of lands, &c. which worke discontinuances, are defeated, the discontinuances themselves are also defeated; As if the husband be seised of land in right of his wife, and make feoffment of fee upon condition, and die; here, if afterwards the heire enter upon the feoffee for the condition broken, the entry of the feme is congeable upon the heire; because by the entry of the heire for the condition broken the discontinuance is defeated. Litt. § 632. Co. ibid. 336. a. 4.

Discontinuance defeated upon surrender.

31 If tenant in taile make a lease for life whereby he gaineth a new reversion, if tenant for life surrender, the estate for life being drowned, the reversion gained by wrong is vanished and gone, and he is tenant in taile again, against the opinion obiter of Portington 21 H. 6. 53. Co. ibid. 338. a. 4.

Advowson usurpation.

32 If B. purchase an Advowson, and suffereth an usurpation and dieth before any thing to passe, and after the usurper granteth the Advowson to Co. ibid. 344. b. 2.

B. and his heires, B. dieth; his heire is not remitted, because his right to the Advowson was remediesse, viz. a right without an action; for a remitter can never enure, but upon a right recoverable by action.

Co.ibid.356.a 1. Litt.Sect.674.

33 If a recovery had been had against tenant for life by default before the Statute of West. 2.cap. 4. he was (at the Common Law) remediesse; because he could not have a writ of Right, in respect of the meanesse of his estate: And therefore (then) if a feme Lessee for life of a house had lost by default, and had after taken husband, and the recoveror had let the house to the baron and feme for their two lives, in this case the feme could not have been remitted, because her estate was remediesse, as aforesaid: But now since that Statute she shall in that case be remitted, because she may now regaine her estate by a Quòd ei deforceat, given by that Statute: for when an Act of Parliament or a custome doth alter the reason or cause of the Common Law, thereby the Common Law it self is also altered: Alterata causa & ratione legis, alteratur & lex, & cessante causa & ratione legis, cessat & lex. *Quod ei deforceat. West.2.cap.4.*

Co.l.12.2.2. *per Popham.* The Lord *Buckhurſts* case.

34 A. enfeoffes B. with warranty; here A. shall have the writings which comprehend the warranty, and not B. because if B. be impleaded, A. may be vouched; But if B. die without heire, the warranty made to B. is vanished, and A. cannot be vouched; And therefore in this case the writings belong to the Lord by escheat. *Writings to whom.*

Co.l.4a.38.b.1. *per wray,* in *Tirringhams* case. *How* and *Redmans* case in *B.R.*

35 In case of common of vicinage one Commoner may inclose against another; for he that hath such a common cannot put his cattle into the land of another, but he ought to put them into his own land where they have common, and if they stray into the other ground, he is excuſed of trespasse, by reason of the ancient usage, which the Law allowes to take away suits, which may arise, if actions shall be brought for every such trespasse, when no separation or inclosure is betwixt the Commoners. For, cessante causa, cessat effectus. *Common of vicinage.*

Co.l.4.62.b 2 *Herlakendens* case.

36 When a man makes a lease for life or yeares, the Lessee hath but a special interest or property in the trees (which are great timber) as things annexed to the land, so long as they remaine annexed unto it: but if the Lessee or any other sever them from the land, the property and interest of the Lessee is thereby determined, and the Lessor may take them as things, which were parcel of his inheritance, and in which the interest of the Lessee is determined. *Trees felled are the Lessors.*

15 E.4.20.b. Co.l.5.13.b. in the Countesse of *Shrewsburies* case.

37 If the bailee of goods, as of a horse, &c. kill them, the Bailor shall have a generall action of trespass against him; because by the killing of them, the property is determined, which restraineth the action of trespass in that case. *The bailee of goods may lose the privity*

Co.l.5.119.b.3 In *Walcots* case.

38 If the Lessee makes waste, and before any action brought repaires the place wasted, and after the Lessor brings an action of waste, the action is not maintainable; for the jurors ought to see the waste, and cessante causa, &c. *Waste.*

Sir *Drue Druries* case. Co.l.6.74.b.4.

39 When the heir within age is made Knight after tender of marriage made unto him, although, whilest he is yet within age, he marry elsewhere, yet he shall not pay the forfeiture of the mariage; for, by making of him Knight he is out of the ward and custodie of the Lord; because after he is Knight, he ought to be sui juris, and to imploy himselfe in feats of armes to defend the Kingdome, &c. And none shall pay the forfeiture of mariage, but he that after refusal marrieth himselfe during the time that he is in wardship: Howbeit the Lord shall immediately after his Knighthood have a writ de valore maritagii, such as in like case is used to be had after the heires full age of 21 yeares. *Forfeiture of mariage not paid after Knighthood.*

40 Since

No protection for *Wales*.

40 Since the Statute of 12 E. 1. which incorporateth Wales into England, and makes it parcel of England in poſſeſſion, no protection, Quia moratur in Wallia, will now lye: becauſe Wales is now within the Realm of England. *Calvins caſe*, Co. l. 7. 21. b. 3.

No wardſhip after attainder

41 Sir Everard Digby by act executed in his life conveyed his lands to the uſe of himſelfe for life with divers remainders over, and then was attainted and executed for the Powder-Treaſon; The queſtion was whether ward of the body or of the third part of the lands ſhould accrue to the King by force of the Statutes of the 32 and 34 H. 8. And it was reſolved, that their could be neither wardſhip nor primer ſeiſin in that caſe: becauſe there could be no heire; for although there may be wardſhip and primer ſeiſin, where there is no deſcent (as in caſe when a man grants all his lands (holden) by deed executed in his life) yet there can be no wardſhip or primer ſeiſin, but where there is an heire, by reaſon of whom alone thoſe rights accrue to the King. *Digbies caſe*, Co. l. 8. 165. b. 4. Co. l. 10. 85. a. 11.

No dower by Guardian.

42 During the minority of the heire a writ of Dower lyeth againſt the Guardian or he may endow the feme without ſuit; if he pleaſe: but after full age, although he hold the land over for the value of the mariage, yet no writ of Dower lyeth againſt him, neither can he endow her; becauſe after the full age of the heir he is no longer guardian. Co. l. 9. 16. b. 4. in *Anne Bedingfields caſe*.

Nuſance removed.

43 In Aſſiſe de nuſans, or Quod Permittat proſternere, &c. it is a good plea, that the Plaintiff himſelfe, (either before the writ purchaſed, or hanging the writ) hath abated the nuſance. Co. l. 9. 55 a. 1. in *Battens* Caſe.

All Soccage Land devided.

44 If there be tenant in tail to him and the heires males of his body the remainder in fee to another, of land holden by Knight-ſervice in Capite, and that is alſo ſeiſed of other lands in ſoccage in fee, and by his will in writting he deviſeth all his ſoccage lands and dies without iſſue male; in this caſe the deviſe is good for all the ſoccage land; for the eſtate of the land holden determines by his death, ſo that there was not any cauſe of ward at the Common Law, ſo it is likewiſe, if the eſtate of the land holden be defeated for a condition broken after the death of the tenant. Co. l. 10. 84. b. 4. in *Lovels* Caſe. 13 El. Dyer 3.

Wood, or trees excepted.

45 If I. grant the Mannor of D. except the wood, by this the ſoil it ſelfe is excepted; but if I. except all my trees growing upon land or paſture out of any wood; there, by the exception of the trees the ſoil it ſelfe is not excepted; But ſufficient nutriment is reſerved out of the land to ſuſtaine the vegetative life of the trees; for without that the trees, which are excepted, cannot ſubſiſt: But if the Leſſor cut them, and by the licence of the Leſſee root them up, in this caſe the Leſſee ſhall have the ſoil; for ceſſante cauſa ceſſat effectus. Co. l. 11. 49 b. 3. *Liffords caſe*.

After pardon no conſpiracy.

46 If a man be falſely indicted of felonie, and after by Act of Parliament a general pardon is granted of felonies, &c. Here, the party ſhall not have a writ of conſpiracie, although he will plead to the indictment and is acquit, and will not plead the Act, &c. becauſe his life was never put in jeopardie (which indeed ought to be the cauſe and ground of the action of conſpiracie) the felonie being pardoned by the Act. Fitz. 115. g.

No attaint.

47 If a man recover outragious damages by verdict, and releaſe parcel of the damages before Judgement, and hath onely Judgement of the reſidue, the defendant ſhall not have attaint for thoſe damages, which are ſo releaſed. Fitz. 109. b.

Goods bailed.

48 If a man have goods delivered unto him to deliver over to another, and afterwards a writ of detinue is brought againſt him, by him, that hath right to have the goods, &c. here, if the defendant, hanging the action, deliver the goods over to him, unto whom they were given Fitz. 138. m.

to be delivered, this is a good barre of that action.

Fitz.139.a. Mich.34.E.1. 49 After a divorce made betwixt Baron and feme, the feme ſhall have a writ of detinue for the goods given with her in mariage not ſpent, Dyer.13.62. 28 H.8. Divorce.

Fitz.152.f. 50 The heire ſhall be charged by a writ of annuity upon grant of his father if he have aſſets by deſcent; but an Annuity ſhall not be maintainable againſt the heire by preſcription; becauſe it cannot be known, whether he had any thing by deſcent from the ſame anceſtor, by whom the annuity began, &c. Annuity.

Plowd.37.a. The Sheriff of *Londons* caſe. 51 If a priſoner in execution in Ludgate be ſuffered to go over the Bridge into Surrey, though he have a keeper with him, yet that is an eſcape; for, being in Surrey, which is another County, he was without gard, and ſo conſequently out of priſon, &c. Eſcape.

Plowd. ibid. per *Chomley*. 52 If a woman be Warden of the Fleet, and one impriſoned there marieth the woman, which is Warden; this ſhall be judged an eſcape in the woman, and the law adjudgeth the priſoner to be at large, becauſe he cannot be lawfully impriſoned but under a Warden, and he cannot be properly conceived under the ward of his wife; And therefore in that caſe the law adjudgeth him to be at large. So if the Warden of the Fleet (who hath his office in fee) die ſeiſed, his ſonne and heire being then priſoner there, and the office deſcends upon him being in priſon; here, the law will adjudge him out of priſon, although he hath fetters upon his legs, he being then without gard, it being impoſſible that he ſhould keep himſelfe in priſon. Priſoners enlarged by mariage, or deſcent.

F.13.E.4.8. Plowd. ibid. 53 If a Juſtice of Peace of one County purſue one into another County for felony comitted in the County where he is Juſtice, and he takes him in the other County; In this caſe he is his priſoner in the County where he takes him, and ought there to be impriſoned, and he cannot ſend or convey him to the Gaol of the County where he committed the felony, for he is not his priſoner there, and being out of his proper County his authority ceaſeth as to that other County: So if the Marſhal hold plea of a thing done out of the verge, or the Admiral of a thing done in the body of the County it ſhall be voyd; for their authority extends to a certaine place, and within a certain precinct, and not elſewhere; and if he which takes Sanctuary goes out, any man may take him; becauſe he hath loſt his priviledge. Power loſt.

Plowd.72.b. Sir *Thomas Popes* caſe. 54 If the Conuſee of a Recognizance (according to the Statute of 23 H.8.cap.6) ſell ſeveral parts of his lands to ſeveral feoffees, reſerving alſo part thereof to himſelfe, if execution be ſued againſt his part, in an Audita querela he ſhall not compel any of the feoffees to contribute; And therefore by the ſame reaſon the purchaſe of part by the Conuſee ſhall not diſcharge the execution; for the execution of the Conuſee ſhall be diſcharged in conſideration that he ſhall be contributory if he were Feoffee and not Conuſee, and then in as much as he ſhall not be contributory, if he were Feoffee and not Conuſee, his purchaſe of part ſhall not diſcharge the execution, being Conuſee, quia ceſſante cauſa, &c. No diſcharge by the Conuſees purchaſe of part.

Co.Inſt. pars 1 70.b.3. 55 If the King had given lands to an Abbot and his ſucceſſors to hold by Knight-ſervice, this had been good, and the Abbot ſhould have done homage and found a man, &c. or have paid eſcuage; But there was no wardſhip or reliefe or other incident belonging thereunto; yet if the Abbot with the aſſent of his covent had conveyed the land to a natural man and his heirs, now wardſhip and reliefe, and other incidents belonged of common right to the tenure: And ſo it is, if the King give lands to a Major and Communalty and their ſucceſſors to be holden by Knight-ſervice; In this caſe the Patentees Lands held by Corporations, in Knights Service.

ſhall

shall do no homage, neither shall there be any wardship or reliefe, onely they shall find a man, &c. or pay escuage: But if they convey over their lands to any natural man and his heires; now homage, ward, mariage, relieſe, and other incidents belong thereunto; quia ceſſante ratione, legis ceſſat ipſa lex.

Lord and Villain. 56 If villanage be pleaded by the Lord in an action Real, perſonal, or mixt, and it is found that he is no villaine, the bringing of a writ of errour is no enfranchiſement, becauſe thereby he is to defeat the former judgement, and if in the mean time the plaintiffe or demandant bring an action againſt the Lord, he need make no proteſtation, ſo long as the record remaines in force (for at that time he is free) but the Lord ſhall be reſtored to all by the writ of errour. Co. ibid. 127. b. 4. 18 E. 4. 6. & 7.

Waſte. 57 If lands be given to two and to the heires of one of them, he that hath the fee ſimple ſhall not have an action of waſt upon the Statute of Gloceſter againſt the Joyntenant for life, but his heir ſhall maintaine an action of waſte againſt him upon that Statute: So that (in this caſe) the heir ſhall maintaine that action, which the Anceſtor could not. Co. ibid 247. b. 3.

Dower. 58 If the husband alien his land, and then the wife is attainted of felony, now is ſhe diſabled, but if ſhe be pardoned before the death of the husband, ſhe ſhall be endowed: Alſo if the ſonne endow his wife at her age of 7 yeares ex aſſenſu patris, if ſhe before the death of her husband attaine to the age of nine yeares, the dower is good. Co. Inſt. pars 1 33. a. 4.

Office, and Rent. 59 The King granteth to one an office at will, and ten pounds yearly rent during life pro officio illo: here, if the King put him out of his office, the rent ſhall ceaſe, 21. 4. Finch 8. Co. ibid. 42. a. 4 3 E. 4. 8.

Guardian in Soccage. 60 The executor or husband (after the death of the wife guardian in Soccage) ſhall not retain the wardſhip; for the guardian hath it not to his owne uſe, but for the benefit of the heire, and the executor or husband by common intendment beare not ſuch affection to the Infant, as the teſtator or his wife did, which was the cauſe, that the law gave them the wardſhip. 7 El. 243. b. Finch 9. Co. Inſt. pars 1 89. a. 1.

A Pardon. 61 If a ſtroke be given the firſt day of May, and the King pardon him the ſecond day of May all felonies and miſdemeanors, the party ſmitten dieth the third day of May, ſo as this is no felony till after the pardon; yet is the felony pardoned; for the miſdemeanors being pardoned, all things purſuing it are alſo pardoned. 13 El. 401. Finch 9.

Livery. 62 The King hath a Ward pur cauſe de gard, and after maketh Livery to the firſt Ward, the ſecond Ward ſhall not ſue Livery. 13 E. 4 10. b. Finch 9.

Coparceners. 63 If two coparceners make a leaſe reſerving a rent, they ſhall have this rent in common, as they have the reverſion: But if afterwards they grant the reverſion, excepting the rent, they ſhall be from thenceforth Joyntenants of the rent. Finch 9.

Challenge. 64 It is no principal Challenge to a juror, that he hath married the parties mother, if ſhe be dead without iſſue; for the cauſe of favour is removed. 14 H. 7. 2. Finch 9.

Entry. 65 If an Infant tenant in taile make a feoffment in fee, and die, his iſſue may enter; but if after the feoffment made he be attainted of felony, and dieth, the entry of the iſſue is taken away, for his entry is not lawful in reſpect of his eſtate onely, but of his blood alſo, which is corrupted; and therefore in that caſe he is driven to his Formedon. Co. Inſt. pars 1 337. a. 2.

Formedon.

Villain. 66 Si mulier ſerva copulata ſit libero, &c. partus habebit hæreditatem, & mater nullam dotem, quia mortuo viro ſuo libero redit in priſtinum ſtatum ſervi- Bract. lib. 4. fol. 198. b. Idem l. 1. c. 6.

ſervitutis, niſi hæres ei dotem fecerit de gratia. Co. Inſt. Pl. 1, 123. a. 2.

Co. Inſt. pars 1 174. a. 4. 67 If one coparcener maketh feoffment in fée, and after her feoffée is impleaded, and voucheth the feoffor, ſhe may have aide of her Coparcener to deraign a warranty paramount; but never to recover pro rata againſt her by force of the warranty in Law upon the partition; for, by her alienation the unitas juris, that was betwixt them, is ſevered, and ſhe hath diſmiſſed her ſelfe to have any part of the land, as parcener; and as parcener ſhe muſt recover pro rata upon the warranty in law, or not at all. Coparcenen.

Co. Inſt. pars 1 2. b. 2. 68 If an alien purchaſe lands, &c. upon an office found the King ſhall have them, yet being a Merchant he may take an houſe, and kéep it ſo long as he uſeth commerce, and for that purpoſe; but when he leaves ſo to do, dies, or departs the Realm, the King ſhall have them. Alien. Merchant.

Dyer 13. 61. 28 H. 8. 69 If a man make his executors and enter into religion, and after is dereigned; In this caſe he ſhall have againe all his goods, which his executors have not ſpent; for, ceſſante cauſa, &c. A Monk dereigned.

Dyer 57. b. 1. 25 H. 8. 70 Ceſtuy que uſe for terme of life (ſince the Stat. of R. 3.) makes a leaſe for the term of the life of the leſſor, and dies; In this caſe, the eſtate of the Leſſée is determined, and he is (after the death of Ceſtuy que uſe) onely tenant at ſufferance. The Lo. Zouches caſe. *Ceſtuy que uſe.*

20 Remoto impedimento emergit actio, & contrà.

Co. Inſt. pars 1 128. b. 2. 1 If the defendant plead an outlawry in the Plaintiffe, in diſability of his perſon, and the Plaintiff after that plea pleaded, purchaſe a charter of Pardon, becauſe the charter hath reſtored him to the law, the defendant ſhall anſwer: So note, the diſability abateth not the writ, but diſ-inableth the Plaintiff, until he obtaineth a charter of Pardon. Out lawry.

Co. ibid. 133. b. 3. 2 Excommunication may be pleaded in diſability of the perſon; yet if the demandant or Plaintiff purchaſe letters of abſolution and ſhew them to the Court, he may have a re-ſummons or re-attachment upon his original, according to the nature of his writ. Excommunication.

9 H. 7. 27. Co. ibid. 238. b. 2. 3 If a diſſeiſor make a gift in taile, and the donée hath iſſue and dieth ſeiſed, now is the entry of the diſſeiſée taken away: but if the iſſue die without iſſue, ſo as the eſtate tail which deſcended is ſpent, the entry of the diſſeiſée is revived, and he may enter upon him in the reverſion or remainder. Entry revived.

13 H. 4. 8, & 9. 33 H. 6. 5. b. *per Moyle.* 34 H. 6. 11. a. *per Curiam.* Co. ibid. 3 If there be grandfather father and ſonne diſſeiſeth one and enfeoffeth the grandfather, who dieth ſeiſed, and the land diſcendeth to the father, now is the entry of the diſſeiſée taken away; but if the father dieth ſeiſed, and the land diſcendeth to the ſonne; here, is the entry of the diſſeiſée revived, and he may enter upon the ſonne, who ſhall take no advantage of the diſcent, becauſe he did the wrong unto the diſſeiſée. The like.

Co. ibid. 4 If a diſſeiſor make a Leaſe to an Infant for life and he is diſſeiſed and a deſcent caſt, the Infant enters, the entry of the diſſeiſée is lawfull upon him. The like.

Co. ibid 245. b. 1. 5 If the mulier entreth upon the Baſtard, and the Baſtard recovereth the land in an aſſize againſt the mulier, now is the interruption avoided, and if the Baſtard die ſeiſed, this ſhall barre the mulier. Baſtard *Mulier.*

Litt. § 407. & 408. Co. ibid. 248. 6 If I am diſſeiſed by an infant within age, who aliens to another in fée, and the alienée dies ſeiſed, and the tenements deſcend, to his heire, the Infant being ſtill within age; here, my entry is taken away Entry revived.

way: but if the Infant within age enter upon the heire, that is in by deſcent (as he well may becauſe the deſcent was caſt during his nonage) then may I well enter upon the diſſeiſee, becauſe the Infants entry hath defeated that deſcent.

The like. 7 If I be diſſeiſed and the diſſeiſee makes a feoffment in fee upon condition, and the feoffee dies ſeiſed of that eſtate; here, I cannot enter upon the heire of the feoffee: But if the condition be broken, ſo that the feoffor doth therefore enter upon the heire; Now may I well enter, becauſe by the entry of the feoffor the deſcent was utterly defeated. Litt. § 409. Co. ibid. 248.

The like. 8 If a feme inheritrix take baron and they have a ſonne, and the baron die, and ſhe takes another baron, and the ſecond baron lets the land, that he hath in right of his wife, to another for terme of his life, and after the ſeme dies, and then the tenant for life ſurrenders his eſtate to the ſecond baron: Littleton makes a Quære, whether the iſſue of the ſeme may enter during the life of the tenant for life, but after his death he holds it cleer he may: and my Lord Cook proves it plainly, that he may alſo enter upon the baron immediately after the ſurrender. Litt. § 836. Co. ibid. 338.

Collateral and lineal warranty. 9 A collateral warranty doth not give a right, but only bindeth a right ſo long as the ſame continueth; and therefore if the collateral warranty be determined, removed, or defeated, the right is again revived: as in this example, If tenant in tail hath iſſue three ſonnes; and diſcontinue the faith in fee, and the ſecond ſonne releaſeth by his deed to the diſcontinuee, binding himſelf and his heires with warranty, &c. and after the tenant in taile dies, and the ſecond ſonne dies without iſſue; here the eldeſt ſonne is barred to have any recovery by writ of Formedon, becauſe the warranty of the ſecond brother is collateral unto him, in as much as he can by no meanes convey unto himſelfe (by force of the entaile) any deſcent by that brother, and therefore as to the eldeſt brother it is collateral warranty; But in this caſe if the eldeſt brother die without iſſue, then may the youngeſt brother well have his writ de Formedon in deſcender, and ſhall recover the land; becauſe the warranty of the ſecond brother is lineall to the youngeſt ſonne, in as much as he might have conveyed unto himſelfe (by poſſibility) the eſtate by his ſecond brother, in caſe he had ſurvived the eldeſt, &c. Co. ibid. 372. a. 1. Litt. § 708.

The like. 10 If tenant in taile lets lands for a man for terme of his life, the remainder to another in fee, and a collaterall anceſtor confirmes the eſtate of the tenant for terme of life, and binds himſelfe and his heirs to warranty for the terme of the life of the tenant for life, and dies; and the tenant in taile hath iſſue and dies; in this caſe, the iſſue is barred of his writ of Formedon during the life of the tenant for life, becauſe of this collaterall warranty deſcended upon him: but after the death of the tenant for life, the iſſue may have that writ, if he pleaſe. Litt. § 738. Co. ibid. 387.

Remainder. 11 If there be tenant for life, the remainder for life, the remainder in fee, and the tenant for life make waſte in the fees, and after he in the remainder for life die, an action of waſte is maintainable by him in the remainder by the waſte done to the life of the tenant for life: And ſo is it likewiſe, where he in the remainder for life (after the waſte committed) ſurrenders his eſtate to him in the remainder or reverſion in fee. Vide Remoto impedimento. Co. l. 5. 76. b. *Pages* caſe, 9 Eliz.

Leaſe by tenant in tail. 12 If tenant in taile of lands in capite makes Leaſes, not warranted by the ſtatute of 32 H. 8. 28. and dies, his heire under age; in this caſe, although the King in right of the heire may avoid thoſe Leaſes for his time, yet if after the Kings intereſt determined, the Co. l. 7. 7. b. & 8. a. The Earl of *Bedfords* caſe.

the heire accepts the rent, they ſhall be thereby made good againe: ſo is alſo of a ſubject that is guardian in chivalry.

Co. ibid. 13 If a Biſhop make a Leaſe, not warranted by the ſtatute (ſo that his ſucceſſor may avoid it and dies) the King ſhall avoid the Leaſe during the vacancy of the Biſhoprick; but after the Kings intereſt determines, if the ſucceſſor accepts the rent, the Leaſe is made good again. By a Biſhop.

Co. l. 8. 71. b. 4 *Grerchcyes caſe.* 14 Land is given to Baron and Feme and to the heires of their two bodies, the Baron makes a feoffment in fee, and having iſſue of the Feme dies, the Feme alſo before entry dies; here, the eſtate taile is diſcontinued, ſo that the iſſue cannot enter: but in this caſe if the Feme had entred and recontinued the eſtate taile, then had the diſcontinuance been purged, and the eſtate tail had been thereby revelled in the Feme, and would have from her deſcended upon the iſſue, and ſo his entry had been congeable. Entry congeable.

Fitz. 28. b. 15 A man ſhall not have execution againſt the Kings debtor, that hath a Protection, becauſe the King ought to be paid firſt; yet if the Plaintiff will undertake to pay the Kings debt, he ſhall have Judgement and execution for both the debts. The Kings debtor.

Co. Inſt. pars 1 33. a. 4. 16 If the husband alien his land, and then the wife is attainted of felonie, now is ſhe diſabled; but if ſhe be pardoned before the death of the husband, then is ſhe again entitled to her writ of Dower. Dower.

Co. ibid. 46. a. 4 17 If tenant in fee take wife, and make a Leaſe for yeares and dieth, the wife is endowed, ſhe ſhall avoid the leaſe, but after her deceaſe, the Leaſe ſhall be in force again. Dower.

Co. ibid. 138. a. 4. 18 Regularly, if the Lord ſue againſt his villaine a Præcipe quòd reddat, &c. that is a manumiſſion; yet if tenant in tail of a Mannor, whereunto a villain is regardant, enfeoffe the recovery of the Mannor and dieth, the iſſue ſhall have a Formedon againſt the villein, and after the recovery of the Mannor he ſhall ſeiſe the villain; and the bringing of the Formedon ſhall work no manumiſſion; for that he could not ſeiſe him, till he had recovered the Mannor, which was the principal; and at the time of the writ brought he was no villain. Lord and Villain.

Co. ibid. 99. a. 2 19 If lands holden by Knight-ſervice be given to an Abbot and his ſucceſſors; albeit he holdeth the lands by Knight-ſervice, and ſhall find a man conveniently arrayed for the warre, &c. yet upon his death no ward, mariage, or reliefe is due to the Lord: Howbeit, if the Abbot with the conſent of his Covent alien the lands to a man and his heires, there is then ward, mariage and reliefe revived, &c. Wardſhip revived.

Littl. § 632. Co. ibid. 336. a. 20 If the baron be ſeiſed of land in right of his wife, and makes feoffment in fee upon condition and die, if the heire do afterwards enter upon the feoffee for the condition broken, the entry of the feme is congeable upon the heir; becauſe by the entry of the heire, the diſcontinuance was defeated. Entry congeable.

Co. ibid. 174. a. 4. 21 If there be two Coparceners, and one of them makes feoffment in fee of her part to a ſtranger with warranty, if the feoffee be afterwards impleaded, he cannot have aide of the other Coparcener to deraigne the warranty paramount, but he may vouch the feoffor, and ſhe may have aide to deraigne the warranty paramount: And yet if there be two Coparceners, and they make partition, and the one of them enfeoffes her ſonne and heire apparent and dieth; in this caſe, if the ſonne be impleaded, albeit he be in by the feoffment of his mother; yet ſhall he pray in aide of the other Coparcener to have the warranty paramount; for upon the deſcent the warranty betwixt the mother and the ſonne is by law annulled, and then he is in the ſame condition, as if the tenements had deſcended upon him. To deraign warranty paramount.

22 Vide

23 Vide, M. 28. Ja. 4 & 5.

Entry. 23 If there be grandfather, father, and ſonne, and the father diſſeiſe the grandfather, and make a feoffment in fee, the grandfather dieth, the father againſt his own feoffment ſhall not enter, but if he die his ſonne ſhall enter; for remoto impedimento, &c. Co. ibid. 265. a. 4.

Protection. 24 Albeit a Protection be allowed by the Court for a yeare, yet if it be repealed by an Inqueſtion, the Re-ſummons or Re-attachment ſhall be granted upon the repeal within the yeare, for Remoto impedimento, &c. And albeit ſome bookes hold the contrarie, yet the later bookes are of that opinion, for otherwiſe the repeale would ſerve for little purpoſe, if the Law ſhould not be ſo taken. Co. ibid. 13. b. 1.

No acceſſory without a principal. 25 A. was indicted for felony, and B. of the receit of A. A. Eſſoignes himſelfe and is outlawed, B. was taken, and putting himſelfe upon the Inqueſt was found guilty, whereupon B. was attainted and hanged, and the Lord entred, as in his eſcheate, and after A. came and reverſed the outlawrie, and pleading to the felony was found not guilty, and ſo was acquit, whereupon the heire brings a Mordanceſter againſt the Lord, he eſcheat, who comes and ſhewes all this matter, unto which it was demurred in Law, whereupon it was awarded, that the heire of B. ſhould recover ſeiſin of the land, for if B. had been then alive, he ſhould have gone quit by the acquittal of A. becauſe he could not be a Receiver of a felon, when A. was no felon: And remoto impedimento, &c. Vide plus ubi ſupra. Co. l. 9. 119. b. 2 in the Lord *Sanchiars* caſe. Temps E. 1. Tit. Mordanceſter 46.

21 *Things are conſtrued according to that, which was the cauſe thereof.* Vide 31. 9.

Tenant by courteſie. 1 If the King give lands to a man and a woman and to the heires of their two bodies, and the woman die without iſſue; yet ſhall the man be tenant in taile after poſſibility, &c. But if the King give land with a woman of his kindred in frank-mariage, and the woman die without iſſue, the man in the Kings caſe ſhall not hold it for his life: becauſe the woman was the only cauſe of the gift; but otherwiſe it is in the caſe of a common perſon. Co. Inſt. pars 1 21. b. 4. 9 H. 3. Dower, 202.

Frankmariage 2 If lands be given to a man and a woman in ſpecial taile, and they are divorced, Cauſa præcontractus, both ſhall hold the lands for their lives; [a] But in caſe of frankmariage, if they be ſo divorced, the woman ſhall enjoy the whole land; becauſe ſhe was the cauſe of the gift. So if lands holden in [c] ſoccage be given in ſpecial taile, and the Donées die the iſſue being within the age of 14 yeares, [c] the next of kinne of the part of the father, or of the part of the mother, which can hap the cuſtodie ſhall have it; but in caſe of frank-mariage the heire of the part of the mother ſhall have it, becauſe ſhe was the cauſe of the gift as aforeſaid. Co. ibidem 88. a. 4. Co. ibid. 7 H. 4. 16. a. a 13 E. 3. Tit. Aſſ. 19 E. 3. Aſſ. 83. 12. Aſſ. 22. 19 Aſſ. 2. c Plowd. *Cargibs* caſe. c 17 H. 3. Gard. 146. 27 E. 3. 29.

Formedon. 3 If a woman tenant in gentail taile maketh a feoffment in fee, and taketh backe an eſtate in fee, and take an husband and hath iſſue, and dieth, the iſſue may in a Formedon recover the land againſt the father; becauſe he is to recover by force of the eſtate taile, as heire to his mother, and is not in that caſe inheritable to his father; the eſtate tail being the cauſe and ground of his title. Co. ibid. 29. b. 3 Co. ibid. 42. a. 4

An Office. 4 A man may have an eſtate for life determinable at will; as if the King doth grant an office to one at will, and alſo grant a rent to him for the exerciſe of his office for terme of life; this is determinable upon the determination of the office, which occaſioned the grant of the rent. 19. 59. 3 E. 4. 8. b.

Co.ibid.85.a.2

5 If a man make a Leaſe for yeares of a Villeine this cannot be done without deed, neither can the Leſſee aſſigne it over without deed, becauſe it is derived out of a freehold that lyeth in grant, which (indeed) is the materiall cauſe of the grant: but a Wardſhip is an original chattel (during the minority) derived out of no freehold, and therefore as the Law createth without deed, ſo may it alſo be aſſigned over without deed. Grant of a Villain by deed.

Co.ibi.102.a.4 9 E.2.execut. 249.

6 Upon a judgement in debt, the Plaintiffe ſhall not have execution, but onely of that land, which the defendant had at the time of the judgement; becauſe the action was brought in reſpect of the perſon, and not in reſpect of the land: But if an action of debt be brought againſt the heirs, and he alienateth, hanging the ſuit; yet ſhall the land, which he had at the time of the Original purchaſed, be charged; for that the action was brought againſt the heirs in reſpect of the land. Judgement, execution.

Co.ibid.102.b. 1. 22 Aſſ.Pl.32.

7 If a man be nonſuit, the land onely, which he had at the time of the amerciament aſſeſſed, ſhall be charged, and not that, which he had at the finding of the pledges; for the amerciament is not in reſpect of the land, but for his want of proſecution, which was a default in his perſon: But the iſſues of a Juror ſhall be levied upon the ſeoffee, albeit they were not loſt before the ſeoffment; becauſe he was returned and ſworn in reſpect of the land. Amerciament, Iſſues of Jurors

a Bract.f.87. c Co.ibid.108 a.4. ubi. Vide prædict. Author.

8 A tenure of the King in Capite, is ſaid to be a tenure of the King, as of his Crown, that is, as he is King: And therefore if one holdeth land of a common perſon in groſſe as of his perſon, and not of any Mannor, &c. and this Seigniory eſcheateth to the King (yea, though it be by attainder of treaſon) he holdeth of the perſon of the King, but not in Capite; becauſe the original tenure was not created by the King. Vide infra M. 25.ca. 10. Tenure in groſs.

Co.ibid.158.a. 3. 15 H.7.9. 14 H.7.31. 18 E.4.3.

9 If the cauſe of challenge alleaged by the Plaintiff againſt the Sheriff be partiality to either party, any proceſſe be once awarded for ſuch partiality, though there be a new Sheriff, yet proceſſe ſhall never be awarded to him, but to the Coroners; and therefore in that caſe the entry is, Ita quòd Vicecomes ſe non intromittat: But if the cauſe of Challenge be, for that the Sheriff was tenant to either party, or the like, in that caſe the proceſſe ſhall be directed to the new Sheriff, and not to the Coroners. Challenge.

Co.ibid.161.a. 2. 44 E.3.20. 6 R.2.Reſc.11 11 H.7.4. 21 H.7.40. 34 H.6.18. 16 E.4.10. Co.l.9.fol.22. *Caſe of Avowry.* Co.ibid.169.b. 2.

10 If the Lord come to diſtreine cattle, which he ſeeth then within his fee; and the tenant or any other to prevent the Lord to diſtreine, drives the cattle out of the Lords fee, into ſome other place not within his fee; yet may the Lord freſhly follow and diſtreine the cattle, and the tenant cannot make reſcous: But if the Lord comming to diſtreine, had no view of the cattle within his fee, though the tenant drive them off purpoſely, or if the cattle of themſelves after the view goe out of the fee, or if the tenant after the view remove them for any other cauſe, then to prevent the Lord of his diſtreſſe, then cannot the Lord diſtreine them out of his fee; and if he doth, the tenant may make reſcous. Diſtreſs.

15 H.7.14. 29 Aſſ.23. 29 E.3.9.b.

11 If there be three Coparceners, and they make partition, and one of them grant 20 s. per annum out of her part to her two ſiſters and their heires for equality of partition; the grantees are not joynt-tenants of this rent, but the rent is in nature of coparcenary, and after the death of the one grantee the moity of the rent ſhall deſcend to her iſſue in courſe of coparcenary, & not ſurvive to the other; for that the rent doth come in recompence of the land, and therefore ſhall enſue the nature thereof; & if the grant had been made to them two of a rent of 20 s. viz. to the one 10 s. & to the other 10 s. yet ſhall they have the rent Rent in Coparcenary.

rent in course of coparcenary, and shall also joyn in action for the same. Co. l. 5. 8. fol. 2. Cases of Leases, Justice Wyndhams case.

The like. 12 If two Coparceners by deed inented alien hath their rents to another in fee, reserving to them two and their heires a rent out of the land; In this case, they shall not be joyn-tenants of that rent, but shall have it in course of coparcenary; because their right in the land, out of which the rent is reserved, was in coparcenary. Co.ibid.164. b.4. 38 E.3.26.b.

Joyn-tenants and tenants in common. 13 If two tenants in Common be disseised, each of them shall have a several assize for his moity because they claime and are vested by several titles: but if 20 joyn-tenants be disseised, they shall have but one assize in all their names; because they have but one joynt title. Litt.§ 311. Co.ibid.195.b. 3.

The like. 14 If there be three joyn-tenants, and one releaseth to one of his companions all his right &c. and after the other two are disseised of the whole. In this case, the two others shall have one assize in both their names for the two parts; because at the time of the disseisin they held them by a joynt title: but as to the other third part, he to whom the release was made, ought to have a several assize of that in his owne name; because of that part he is tenant in common, and hath title to it by force of the release, and not onely by force of the joynture. Litt.§ 312. Co.ibid.196. a.1.

Coparceners. 15 If five Coparceners have issue each of them a sonne, and die, and the sonnes before partition are disseised: in this case they shall joyn in an Assize; for, although they claime by several titles in respect of the several descents from their mothers, yet in as much as the land intirely descended from their grand-father to their mothers, they are in law accompted Coheires, and 2. writ. de partitione faciendâ lyeth but for them, and consequently shall have but one Assize. Litt.§ 313. Co.Inst.pars 1. 196.a.4.

Tenants in common. 16 In real and mixt actions tenants in common shall sever in action, because they have several freeholds, and claim by several titles, but they shall have actions personal joyntly in all their names, as an action of trespass, of accompt against the Bailiff of their Mannor, or the like; and in this case also the survivor takes place; because these actions found in the personalty, and not in the realty; and the trespass and damage done unto them (which indeed is the cause of the action) is joynt; and therefore ought to be joyntly prosecuted, and shall also joyntly survive; and the same Law is of Coparceners. Co.ibid.195.b. 3.198.a.1.

Mortgage. 17 If the feoffee in mortgage before the day of payment, which should be made unto him, make his executors and die, and his heire enters into the land as he ought, &c. Resolved in this case that the executors ought to pay the money at the day appointed to the executors, and not to the heire of the feoffee: because the money at the day is accrued unto the feoffee, in the nature of a duty, and it shall be increased, that the estate was made by reason of the loaning of the money by the feoffee, or in respect of some other duty. Litt.§ 339. Co.ibid.209.b.

A mad man. 18 In criminal causes, as felony &c. the actuall wrong of a mad man shall not be imputed to him: for that in those causes, Actus non facit reum, nisi mens sit rea, and he is said to be Amens, that is destitute of reason, and therefore his madnesse being the cause thereof, and not his intention, he is excusable. C.l.4. 124.b.in Beverleys Case. Co.ibid.247. b.1. ubi vid. Pl.an. Plowd.19.a.

Entry, and Claim. 19 Littleton saith, that if a man having title to enter into lands, dare not do it for fear of beating, maiming, or death; that then he ought to approach where the land is, as he dare, to make his claime, yet in this case every doubt or feare is not sufficient; for it must con-

cent the entry of his perſon, & not of his houſes or goods, for the fear of burning his houſes, or of taking away or ſpoyling his goods, are not ſufficient cauſes to make him forbear to make his entry or claime upon the land, becauſe he may recover the ſame againe, or (at leaſt) damages to the value of them without any corporall hurt: And here alſo, though the ſtate do concerne the perſon, yet it muſt not be a vaine feare, but ſuch as may juſtly cauſe a conſtant man to be afraid by reaſon of ſome overt act, as if the demaundant party be in wait in the way with weapons, or by words menace to beat, maime, kill, or captivate him, &c. Talis

Bract. lib. 3. tr. 2. c. 6. b. Brit. 19. 66. &c.

metus debet eſſe in talis qui cadere poſſit in virum conſtantem, & qui in ſe contineat juſtum periculum & corporis cruciatum.

Co. ibid. 166. a. 3.

20. If the Donee in taile diſcontinue in fee, the reverſion of the Donor is turned to a naked right; and here, if the Donor releaſe to the diſcontinuee, and the Donee die, and the iſſue in taile both recover the land againſt the diſcontinuee, he ſhall recover no more then the eſtate taile; and muſt then (by conſequence) leave the reverſion in the diſcontinuee; for he can recover no more, than was due to him by the gift of the Donor, which was the cauſe and ground of his title; neither yet in this caſe ſhall the Donor have the reverſion againe, againſt his own releaſe. Diſcontinuance of an eſtate taile.

Co. ibid. 355. a. 2.

21. Whereas ſome have holden opinion that upon a recovery had by default in an action of Waſte againſt tenant in Dower or by the courteſie, a Quod ei deforceat lyeth not, becauſe y default is not the cauſe of the judgement; for notwithſtanding y default there goeth forth a writ to enquire de vaſto facto, & quod vaſtum predict. A. (the defendant) fecit: ſo as the defendant may give evidence, and the jurors may find for the defendant, that no waſte was done; as in an aſſiſe, albeit it be awarded by default, yet may the tenant give evidence, and the Recognitors of the Aſſiſe may find for the tenant: And therefore in theſe or the like caſes, the tenant or defendant non amittit per defaltum, (as the Statute and Littleton ſpeak) and they cite F.N.B. in the point: Nevertheleſſe others hold the contrary, becauſe albeit in the writ of waſt judgement is not given only upon the default, yet the default is the principal, and the cauſe of awarding the writ to enquire of the waſt; as an incident thereunto; and the Law alwayes hath reſpect to the firſt and principall cauſe of a thing, from whence it takes the firſt riſe and being. Waſte.

Litt. Sect. 674. 675. Weſt 2. c. 4. Fitz. 155. c.

Co. ibid. 364. a. 4. 10 H. 6. 10. 31 H. 6. Entry congeable 51.

22. Where Joynt-tenants or Coparceners have one and the ſame remedie, if the one enter, the other ſhall enter alſo; but where the remedies be ſeveral, there it is otherwiſe; As if two Joynt-tenants or Coparceners joyne in a real action, where their entry is not lawfull, and the one is ſummoned and severed, and the other purſueth and recovereth the moity; the other Joynt-tenant or Coparcener ſhall enter and take the profits with her; becauſe their remedie was one and the ſame: But where two Coparceners be, and they are diſſeiſed, and a deſcent is had, and they have iſſue and die, if the iſſue of the one recover her moity, the other ſhall not enter with her, becauſe their remedies were ſeverall; and yet when both have recovered, they are Coparceners againe: So if two Joynt-tenants ſeiſed of lands (the one of full age, the other under age) be diſſeiſed, &c. And the diſſeiſor die ſeiſed, ſo as iſſue enter, the one of the Joynt-tenants being ſtill under age, And after that he comes to full age the heir of the diſſeiſor lets the lands to the ſame Joynt-tenants for their two lives: This is a recontre of the moity to him within age, becauſe his entry was congeable; but the other Joynt-tenant hath but an eſtate for life in the whole moity by force of the Leaſe, becauſe his entry was taken away, as you ſhall find it in Littleton Sect. 696. If A. and B. Joynt-tenants Joyn-tenants, and tenants in common.

Litt. § 696.

remains in the be diſſeiſed by the tenant of A. who dieth ſeiſed, his ſonne into the heire entreth, he is remitted to the right, and his companion ſhall take advantage thereof: Obſerve here in the caſe of Litt. for that the advantage is given to the infant, more in reſpect of his perſon than of his right, whereof his Companion ſhall take no advantage: But if the Grand-father had diſſeiſed the Joynt-tenants, and the land had deſcended to the father, and from him to A. and then A. had died, the entry of the other Heirs had been taken away by the firſt perſon, and therefore he ſhould not have entred with the heir of A. &c.

Warranty that begins by diſſeiſin. 23 If A. de B. be ſeiſed of an houſe, and P. de G. enter into the ſame houſe, claiming it to him and his heires, and make a feoffment thereof with warranty to certaine Warrentors in the Country to be maintained by them; by reaſon whereof A. de B. dare not ſtay in the houſe, but goes out; This is warranty that begineth by diſſeiſin; becauſe that feoffment was the cauſe why A. de B. loſt the poſſeſſion of the ſame houſe. Litt. § 361.

Tenant in tail, the reverſion in the King. 24 If a ſubject make a gift in tail, the remainder to the King in fee, Albeit the words of the ſtatute of 34 H. 8. cap. 20. be (whereof the reverſion or remainder at the time of ſuch recovery had, ſhall be in the King, &c. yet ſeeing the eſtate taile was not originally created by the King, the eſtate taile may be barred by a Common recovery: So likewiſe if Prince H. ſonne of H. 7. had made a gift in taile the remainder to H. 7. in fee, which remainder by the death of H. 7. had deſcended to H. 8. So as he has the remainder by deſcent; yet in this caſe alſo a Common recovery would have barred the eſtate taile. Co. ibid. 372. b. 3.

No fine before admittance. 25 Popham Chief Juſtice ſaid, that it was adjudged in Sands his caſe, that no fine was due to the Lord either upon Purchaſe or deſcent until admittance: For the admittance is the cauſe of the fine; and if after the tenant denie to pay it, that is a forfeiture. Now ſo it was alſo reſolved by Wray and Perkam in a caſe between Sir Nich. Bacon and Flatman. Co. l. 4. 28. a. 31 Copihold caſes. Hubbert and Hamons caſe.

The cauſe muſt be ſhewed, why the Biſhop refuſeth to admit. 26 If a Clerke be preſented to a Biſhop to be admitted to a Benefice, and he refuſeth him in preſence of inſufficiency or other defect: In a Quare impedit the Biſhop ought to alleadge ſome particular crime or cauſe why he did not admit him, and not generally, quòd non eſt idoneus, quòd eſt criminoſus, ſchiſmaticus, inveteratus, or the like: For although it belongs not to the Kings Court to determine ſchiſmes or hereſies; yet the originall cauſe of the ſuit being matter, whereof the Kings Court hath conuſance, the cauſe of the crime or hereſie, for which the preſentee is refuſed, ought to be alleadged in certaine, to the intent that the Kings Court may conſult with Divines, to know whether it be ſchiſme or no; and if the party be dead, may thereupon diſcharge the Jury which is to try it. Co. l. 5. 58. a. 4. Spencer's caſe.

Felons goods for flying cannot be forfeited by preſcription. 27 If a man flie for felony, his owne goods are not forfeited, unleſſe it be found by the inditement before the Coroner, in caſe of County, or other wiſe lawfully found upon record, that the felony was the cauſe of his flight. For if the goods of any ſhall be forfeited, onely by reaſon of this flying, without more, then a man may have ſuch goods to forfeited by preſcription, as he may have treaſure trove, &c. but in as much as bona fugitivorum are not forfeited, unleſſe the flight be lawfully proved upon record, and becauſe things forfeited by matter of record cannot be claimed by preſcription, which is a matter in fact; for this cauſe they cannot be claimed by preſcription. Co. ibid. 109. b. 1. Foxleyes caſe.

28 Deodands are the goods, which cauſe the death of the party

killed

Co. ibid. 11 b. 4. killed by misfortune, and are not forfeit, until it be found upon record, that they were the cause of his death, and therefore they cannot be claimed by prescription no more than bona fugitivorum, for which Vide supra, 37.

Deodands not forfeited by prescription in *England*.

M. 30, & 31. El. Co l. 6. 47. b. *Dowdales* case Co. Inst. pars 1 261. b.

29. In an action upon the case upon Assumpsit, the Plaintiff counts, that the defendant at London did assume, that such a Ship should sail from Malcomb Regis unto Abivill in France safely without violence, &c. and that the Ship sailing thitherwards was arrested by the King of France, upon the River of Somme within the Kingdome of France, &c. And issue was joyned whither the ship was so arrested or not, and before Wray Chief Justice in London it was found for the Plaintiff; and in arrest of judgement it was moved, that this issue arising meerly from a place, which was out of the Realme, could not be tried, and that if it might be tried in England, the trial should be by a Jury taken out of Malcomb, because by common intendment they might be best acquainted with the arrest. But it was resolved, that although it be true, that where the contract and the performance thereof are both of them done or to be done beyond sea, there will want trial in our Law; yet in this case the Assumpsit, which is the ground and original cause of the action, being made at London, the trial thereof must of necessity be there also: The like case was adjudged in P. 28. El. betwixt Hugh Gyne Plaintiff, and Evangelist Constantine Defendant.

Trial of a thing done in *Fraus*.

Co. 7. 6. a 4. *Calvins* case.

30. It is neither Ius Soli nor Solum, but Ligeantia and Obedientia, that maketh the subject borne: for if enemies should come into the Realm, and possesse a town or fort, and have issue there, that issue is no subject to the King of England; although he be born upon his soile, and under his meridian; because he was not borne under the ligeance of a subject, nor under the protection of the King, &c. And therefore when Stephano Ferrara de Gama, and Emanuel Lewes Tinoco, two Portugals born, coming into England under Qu. El. safe conduct, and living here under her protection, joyned with Doctor Lopez in treason within this Realme against her Majestie; In that case two points were resolved; 1. That their indictment ought to begin, that they intended treason contra Dominam Reginam, &c. omitting these words (naturalem Dominam suam) and ought to conclude contra ligeantiæ suæ debitum. But if an alien enemy come to invade this Realm, and be taken in warre, he cannot be indicted of treason; for the indictment cannot conclude contra ligeantiæ suæ debitum, because he never was in the Kings Protection, nor never owed any manner of ligeance unto him but malice and enmity. And therefore such an alien enemy shall be put to death by Martial Law, As it was in the case of Perkin Warbeck, Anno 15 H. 7. who by the opinion of the Judges was to be executed by Martial Law, which was done accordingly.

One may be born in *England*, and yet not within the Kings allegiance.

Co. l. 7. 15. a. 3. *Calvins* case.

31 Albeit, since K. James tooke upon him the Crown of England, a Postnatus in Scotland (and any of his posterity) be the heir of a Nobleman of Scotland, and by his birth is legitimated in England, so that he may inherit Lands as well as a natural borne subject; yet he is none of the Peers or Nobility of England, For his natural ligeance and obedience due by the Law of nature, maketh him a subject and no alien within England: But that subjection maketh him not noble within England; because Nobility had his first original by the Kings Creation, and not of nature.

A *Postnatus* cannot be noble in *England*, without creation.

Co. l. 7. a. 2. a. 4. *Bulwers* case.

32 Vide 3 E. 3. Tit. Assize 446. In debt if a man count of a lease, for years in one County, of Land in another County, he ought to bring his action in the County where the Lease was made, and not where the Land lies: for the contract made by the Lease is the ground and cause of the action.

Lease made of Land in another country.

33 The

The action to be laid, where the cause began.

33 The Plaintiff counteth, that H. H. recovered against him 20 l. in Banco, and died before execution, and that the Defendant deceitfully outlawed him after Judgement in the name of H. H. and thereupon imprisoned him in Norfolke, laying his action in that County where he was imprisoned; whereupon the Defendant making objection, that the action ought to have been layd where the wrong did begin by the purchase of the cap. ad satisfact. exigit, cap. utlag. viz. in London, It was resolved, that the action was well layd in Norfolke, where the Imprisonment, the most visible wrong, was, being (indeed) the chiefe ground and cause of the action. Co. ibid. 1. *Bulwers* case.

Waste and a writ of right of ward, to be brought in where the land lies.

34 If a Lease be made in one County, and the land lies in another, the action of waste shall be brought where the land lies, and not where the Lease was made, although the terme be past; for the land and damages, or damages onely for the waste, which is local, shall be recovered, and are the ground and cause of the suit. So also in all actions real, if any issue arise upon the land, or in any action, in which the possession of the land, or a thing local, or that which ariseth upon the land by reason thereof, is to be recovered, all these shall be brought in the County where the land lies; As in a writ of right of ward of land, or a writ of intrusion of ward, they shall be brought in the County where the land lieth, although the refusal or the Seignory be in another County: Likewise in a writ of right of ward of the body onely, that shall be brought in the County where the land lies; for it is in the right and favours of the land: But the writ of Ravishment of ward shall be brought where the Ravishment was, and not where the land is, or where the bodie is carried; for that action is founded upon the Ravishment, &c. 36 H. 6. 14. 22 R. 2. Bre. 937. & 12 Eliz. Dyer. 289. Co. ibid. 2. b. *Bulwers* case. 14 E. 3. 3. 29 E 3. 3. 38 H. 6. 14. 22 R. 2. Breve 937. 21 E. 3. 42. 30 E. 3. 25. 9 E. 3. 12, 13. 10 E. 3. 7.

Condition of Vicinage.

35 If the Commons of the Town of A. and of the Town of B. are adjacent, and ought to have Common promiscuè the one with the other because of vicinage, and within the Town of A. there are fifty acres of Common, and in the Town of B. 100 acres of Common; In this case the Inhabitants of the Town of A. cannot put more cattle into their Common of 50 acres than it will well keep without any respect at all to the Common within the Town of B. nec è converso; for the original cause of this condition by reason of vicinage was not for profit but to prevent suits in Champion Countries for the reciprocal escapes of the one Town into the other. Co. l. 7. 5. b. 3. Sir *Miles Corbets* case.

Condition precedent and subsequent.

36 In all cases when an interest or estate commenceth upon a Condition precedent, be the Condition or Act to be performed by the Plaintiffe or Defendant or any other, or be the condition in the affirmative or the negative; there the Plaintiffe ought to shew it in his Count, and averre the performance of it; for there the interest or estate commenceth in him by the performance of the Condition, and is not in him till the Condition be performed: but it is otherwise when the interest or estate passeth presently and vests in the grantee, and is to be defeated by matter ex post facto, or Condition subsequent, be the Condition or Act to be performed by the Plaintiffe or Defendant or by any other, and be the Condition in the affirmative or the negative; there the Plaintiffe may count generally without shewing the performance of it; and it shall be pleaded by him that will take advantage of the Condition or matter ex post facto; for every one ought to alleadge that, which makes for him, and is for his advantage, but none shall be compelled to produce that which makes against him. Vide infra 27. 20. Co. l. 7. 10. a. 1. *Aghtreds* case.

Copiholder may lop trees.

37 The Lord of a Copihold Mannor, within which the Copiholders might by custome lop the timber trees for ehovers and necessary repaire Co. l. 8. 63. *Swaynes* case.

paire of fences, &c. makes a Lease thereof to A. for 21 years, excepting the timber trees; A Copihold tenant having lands upon which such timber grew, surrenders his estate to another, who was admitted by A. the Lessee of the Manor, and lops the trees for necessary repair of fences: Now the question was, whether the Copihold tenant being admitted by A. who had no interest of the trees by reason of the exception, had power to lop them, because Nemo potest plus juris ad alium transferre, quàm ipse habet: And it was resolved that he might lawfully lop them, because the estate of a Copiholder is not derived out of the estate or interest of the Lord of the Manor (for the Lord is but as it were an Instrument to convey the grant of the Copihold) but the Custome of the Manor (after the grant is made) is that, which establisheth and makes it firme to the Grantee: So that although the grant be new, yet the title of the Copiholder to the profit of the trees is ancient, and so ancient, that by force of the Custome it excéeds the memory of man. Vide Co. 4. 27. b. Taverners case, & 28 b. Westicks case. Vide 30. 22, 23.

Co. l. 4 21. a *Browns* case, fol. 23. b *Clark*, and *Pennyfathers* case. & fol. 24. a. Pl. 26. Eliz. & 29. b. 2. *Bunings* case.

38 Gore (the husband of Agnes) being sick, Roper the father of Agnes procures an Electuary of Martin the Apothecary by the advise of Doctor Grey into which Agnes secretly puts Rats-bane to poison her husband, and the 18 of May gives part thereof to her husband, who thereupon became very sicke, Roper also and another eating part thereof became very sick; at last Martin (being tazed for making the Electuary in that manner) the 21 of May stirres it, and also eats part thereof, and dies the next day: And it was resolved by all the Judges of England, that this was murder in Agnes, and that this case did not differ from Sanders case in the Commentaries, although Martin by stirring it made the poison more forcible; for the stirring, &c. without putting in the poison could not be the cause of his death; and the Law joynes the murderous intention of Agnes in putting the poison into the Electuary to kill her husband with the event, which insued thereupon, viz. the death of Martin; for the putting in of the poison was the cause, and the poisoning and death of Martin was the event, Quia eventus est qui ex causa sequitur, & dicuntur eventus, quia ex causis eveniunt. So if A. puts poison into wine with an intention to kill B. and C. conceiving it to be sugar, stirres it, drinks it, and dies, this is murder in A. It is otherwise where Rats-bane is layd with an intention to kill rats, and one takes it, eats it and dies; for there was no felonious intent, &c. Co. l. 9. 81. *Agnes Gores* case. Plowd 474. It may be murder, though not intended.

39 Upon grant of a Manor, attornement of an infant (being tenant of the same Manor) is good, and in a Per quæ servitia against an infant, that hath the tenancy by descent, he shall not have his age; because at first the Lord departed with the land in consideration that the tenant should hold of him, perform services, pay a yearely rent, &c. and the tenant is in Law called tenant paravaile, because the Law presumes that he hath benefit and availe above the services which he doth, and the rent which he payes to the Lord: And therefore it is against the reason and purpose of the creation of the tenure, that, when the heire hath the tenancy paravaile by descent, he should not pay the annual rent, &c. which was reserved upon the Creation of the tenancy: And this is the reason, that the heire of the tenant, who hath the tenancy by descent, may be distrained for the rent, &c. arrere during the minority, and shall not therefore have his age, &c. Co. l. 9. 85. a. *Conyes* case. An Infant shall do his services, &c.

40 For every feeding of the Cattle of a Stranger upon a Common, the Commoner shall not have an Assise, nor action upon the case (as his case lies) but the depasturing ought to be such, per quòd le Commoner, &c. Common de pasture, &c. for his Cattle, &c. habere non potuit, sed proficium suum Co. l. 9. 113. a. *Maryes* case. Trespass for common, & contrà.

fuum inde per totum idem tempus amisit; &c. So that if the trespasse be so little that he hath not any losse, but that still sufficient remaines for him to depasture his cattle: In that case the Commoner shall not take the Strangers Cattle damage fesant, neither shall he have any action for it: but the tenant of the soile may in that case have an action. So if a servant be beaten, the Master shall not have an action for that battery, except that by reason thereof he loseth his servants service; but the servant for every slight battery may have an action; and the cause of this diversity is, for that the Master receiveth no damage by the personal battery of his servant, but by reason of per quod, & per quod servitium, &c. amisit; So that the original Act is not the cause of his action, but the consequent upon it, viz. the losse of his service; and the same reason holds in the case of a Common, as above said.

A release of remainder of a tenr. good. 41 Quando diversi desiderantur actus ad aliquem finem perficiendum, plus respicit lex actum originalem, quia cujusque rei potissima pars est principium: And therefore if A. possest of a Lease for the terme of 500 yeares demiseth the terme to B. for life, the remainder to C. and the heires of his body, and makes B. his executor, and dies, and after B. is possest of the Lease, C. releaseth to B. all his right in the terme; In this case, although it was objected, that the release was void, because C. at the time of the release, had no estate in him, but onely a possibility, the whole estate and terme of yeares being in B. so that after the death of B, C. might enter upon the Lease againe notwithstanding the release; yet it was resolved, that C. by that release had extinguished all his right and title in the term, and had fixed it in B. because the devise by A. and the assent of B. the executor (appearing by his acceptance of the release) were as the original and fundamental causes of the interest of C. and the death of B. is but a meane to bring the Lease in possession, and gives nothing at all: for that the whole interest accrues by the devise, and is executed by the assent of the executor, and therefore C. had not onely a possibility, but likewise such an interest as might well be released. &c. But in that case a grant by C. to a Stranger had been void. Co.l.10.49.a.4 *Lampets* case. *Fulwoods* case. Co.l.4.66.b.

The Commissioners of Sewers, 42 Every Statute, Ordinance, and Prohibition which is to be made by force of the Commission of Sewers ought to consist of 4 causes. 1 The Material cause, which is the substance. 2 The Formal cause, and that is the manner with convenient circumstance. 3 The Efficient cause, and that is their authority according to their Commission. 4 The Final cause and that is pro bono publico, & nunquam pro privato. The consideration whereof will be as so many Sea-marks to direct the Commissioners how to steere in the execution of their charge, and how to order the liberty which is given them by the Statute of 23 H. 8. 5. viz. to make such Ordinances, &c. according to their owne wisedomes and discretions, &c. which words are meant and ought to be interpreted, according to Law and Justice; For every Judge or Commissioner ought to have duo grana salis, viz. unum sapientiæ, ne sit insipidus, & alterum conscientiæ, ne sit diabolus; And discretion is well described to be, scire per legem quid sit justum. Co.l.10.140.a. *Kighelcyes* case

The in a Leet ought to be distinct, and not joynt. 43 In a Leet, a fine of 6 li. put upon all the Jurors joyntly, by the Steward, (because they would not present a thing, which by the custome of the Manor they ought to present) is not duly imposed, but ought to have been assessed upon them severally; for that the cause, which occasioned the fine, is several, because the refusal of each of them is several and personal, and the refusal of one is not the refusal of another; and therefore if some of them refuses, and the rest be ready to present, onely those that refuse are to be fined, &c. Co.l.11.42.b. *Godfreyes* case.

Damage fesant. 44 If a man take beasts damage fesant, and the other offers sufficient Fitz.69.g.

cient amends, and he refuſeth, &c. Here if he ſue a replevin, &c. for the Beaſts, he ſhall recover damages onely for the detinue of them, and not for their taking; for that the cauſe of taking them was lawfull.

Fitz.79.b. 45 The Peace ought no be granted againſt any without good cauſe; and therefore by the ancient courſe of the Law the party complaining uſed to make oath before a Maſter of the Chancery, that he was in feare, &c. of ſome corporal damage, and did not take that oath for malice againſt his adverſary: the like ought to be obſerved by the Juſtices of the Kings-Bench, and of Peace. Binding to the Peace.

Fitz.95.d. 46 If a man winne anothers money with falſe dice, he that is deceived may have an action of Deceit againſt the party ſo deceiving him; And in this caſe although the Defendant do not entice the Plaintife to play, yet it ſeemes he may well maintaine that action againſt the Defendant; becauſe the excitation to play at dice, is not the cauſe of the action, but the caſting of the falſe dice, &c. by which he winne the money, &c. Cheating at Dice.

Fitz.104.l. 47 If a man acknowledge a Statute Staple, or Statute Marchant by dures, &c. he may have an Audita querela to avoid it, becauſe the impriſonment was the cauſe thereof. Dures.

Plowd.19.a. *Fogaſſaes* caſe. 48 If a man by dures be compelled to ſeale a bond, he ſhall avoid it: So if a mans arme be drawne by compulſion, and by that occaſion the weapon in his hand kills another, that is not felony; Likewiſe if an infant under the yeares of diſcretion, or a man de non ſane memory kill a man, they ſhall be excuſed, becauſe their ignorance, and not any wicked intention was the cauſe thereof. Dures, or other compulſion.

M.20.H.7.12. *per Rede.* Plowd.26.b.4. *Colthrift*, and *Biviſhams*. 49 If one retaine another to ſerve a yeare for 20 s. wages; here, if the ſervant demand the 20 s. he ought to ſhew that the time is paſt, viz. that the yeare is expired, and he ought to plead certain, becauſe his action is given in reſpect of the yeare paſt, and of a thing done in time, and the time is parcel of the cauſe of the demand, and precedes the demand. Wages for a years ſervice.

Plowd.98.a. Matters of the Crown. 50 In Olivers caſe in the Commentaries, thoſe that ſtood by and abetted the Murderers, were as well principals, as thoſe that killed him; becauſe the number of them then preſent, and ready to ſtrike him, ſhall be adjudged the cauſe of his terror, and of the abatement of his courage, and an occaſion to make him deſpaire of defending himſelfe, and by conſequent that terror was the cauſe of receiving his wounds, and the wounds the cauſe of his death. All principalls in Murder.

Plowd.99.b. 101.a. Matters of the Crown. 51 Amongſt the matters of the Crowne in the Commentaries, divers perſons having a malicious intention to murder Doctor Ellis, killed his ſervant unto whom they bare no former malice; yet was it adjudged Murder, becauſe of their murderous intention, which was the cauſe of his death; it is otherwiſe when one having no malicious intent, joynes himſelfe with others, that commit a murder, for that is but Man-ſlaughter in him, that ſo ſuddenly joynes with them. Murder, though the party intended not killed.

44 E.3.14.b. 14 Aſſ.Pl.20. Finch 10. 52 A man makes me ſweare to bring him money to ſuch a place, or elſe he will kill me, I bring it accordingly, this is felony. So if he make me ſwear to ſurrender my eſtate unto him, and I do ſo afterwards, this is a diſſeiſin to me. Terrour.

21 E.4.68.b. Finch 10. 53 One impriſoned till he be content to make an Obligation at another place, and afterwards he doth ſo, being at large; yet he ſhall avoid it by dures of impriſonment. The like.

3 E.3.84. Finch 10. 54 Outlawry in treſpaſs is no forfeiture of land, as Outlawry of felony is; for although the not appearing be the cauſe of Outlawry Outlawry in treſpaſs in forfeiture.

ry in both, yet the force of the Outlawry shall be esteemed according to the heinousnes of the offence, which is the principal cause and foundation of the processe.

Villenage. 55 A man and a feme sole have a villein, and afterwards enter-marry, and the villeine purchaseth land, they shall not have the land by entierties, but by moities Joyntly or in Common, as they had the villein. Finch 10.

An action for goods bailed. 56 If one deliver goods to another, and after the Bailor releaseth to the Bailée all actions, the Bailée dies, in a writ of Detinue brought against his executors, they shall not take advantage of that release; for that determines by the death of the Bailée, and the action given against the executors is a new action (although of the same nature) grounded upon their own detainer. 22 H.6.1. Co.l.10.51.b. *Lampets* case.

Election of an Annuity, or distress. 57 If a rent charge be granted to A. and B. and their heires, A. distreineth the Beasts of the Grantor, who sueth a Replevin, A. avoweth for himselfe and maketh Conusance for B. A. dieth and B. survives, here B. shall not afterwards have a writ of Annuity, for, the election and avowry for the rent of A. barreth B. of any election to make it an annuity, albeit he assented not to be the avowry; because in that case the act of one joyn-tenant barreth the other, and the election takes his rise from several causes, viz. the land or the person; and therefore when the election once fixeth upon the land, it cannot afterwards charge the person: It is otherwise when a man may have election to have several remedies for a thing, that is meerly personal or meerely real from the beginning: As if a man may have an action of accompt, or an action of debt at his pleasure, and he bringeth in an action of accompt, and appeares to it, and after is non-suit, yet may he have an action of debt afterwards because both actions charge the person: The like Law is of an Assise, or of a writ of Entry in the nature of an Assise, and the like. Co.Inst.pars 1. 146.a.1. 28 E.3.98.b. 27 E.3.89.b.

Wager of law. 58 In an action of accompt against a receivour upon a receipt of money by the hand of another person for accompt render (unlesse it be by the hands of his Wife or Commoigne) the defendant shall not wage his Law; because the receipt is the ground of the action, which lyeth not in privity betwixt the Plaintife and Defendant, but in the notice of a third person, and such a receipt is traversable: But in an action of debt upon an arbitrament, and in an action of Detinue by the bailment of anothers hand, the Defendant shall wage his Law, because the Debet and the Detinet is the ground of those actions, and the contract or bailment, though it be by another hand, is but the conveyance, and not traversable. 15 E.4.16. 10 E.4.5. Co.Inst.pars 1 295.a.3. 2 33 H.6.14. 13 H.7.3.a. 22 H.6.41. 1 H.6.1.b. 8 H.6.11, &c.

Descent to Daughters, & yet no Coparceners. 59 Land is given to a man and his wife and the heires of their two bodies, and they have issue a daughter, the wife dies, the husband takes another wife and hath issue another daughter, and discontinues the taile, and after disseiseth the discontinuée, and so dies seised; here, the land shall descend to both the daughters; but yet they are not Coparceners; because they are in by several Titles, viz. the eldest is remitted by force of the intaile to the one moity, and the other hath Fee simple by force of the descent from her father: but in this case, the eldest shall out the youngest by her action of Formedon. Litt.§ 662, 663.

Recovery in value. 60 If the heir of the part of the mother of land, whereunto a warranty is annexed, is impleaded and vouch over, and judgement is given against him, and for him to recover in value, and dieth before execution, the heir of the part of the mother shall sue execution to have in value against the vouchée; for the effect ought to pursue the cause, and the recompence shall ensue the losse. Co.Inst.pars 1 13.a.1. Pl.Co.292.315

Co.ibid.201. b.3. 61 He that will take advantage of a re-entry for non payment of rent, muſt make demand of the ſame upon the land; becauſe the land is the principal debtor; for the rent iſſueth out of the land, and in an Aſſiſe for the rent the land ſhall be put in view; and if the land be evicted by a title paramount, the rent is avoided, and after ſuch eviction, the perſon of the Feoffée ſhall not be charged therewith; for the perſon of the Feoffée was onely charged with the rent in reſpect of the grant out of the land, &c. Howbeit Homage, or any other ſpecial corporal ſervice, muſt be done to the perſon of the Lord, and the tenant ought by the Law of convenience to ſeek him, to whom the ſervice is to be done, in any place within England; for that and the like ſervices are due and iſſue out of the land in reſpect of the perſon, &c. Demands upon the land.

Co.ibid.210.a.1.

F.N.Br.150.d. 62 If a man recover in value againſt the baron by warranty of the anceſtor, yet the feme of the baron ſhall be endowed; becauſe the recovery was had by force of the warranty made, and not by reaſon of any eigne title to the land. Dower.

Dyer 13.62. 28 H.8. 19 E.3. 63 If land be given in Frank-marriage, and after the Dames are divorced, the party by whom the cauſe of the Divorce was firſt moved, ſhall loſe the land; as if the feme ſued for it, the baron ſhall have it, & è contrà. Tamen quære; for one book ſaith, that the land ſhall be divided betwixt them. per Fitzherbert. Divorce.

F.N.B.121.p. 64 If a man be condemned in treſpaſſe or debt upon an obligation, (where he denies his déed) at the ſuit of the partie, and after he that is condemned is taken by Capias pro fine at the ſuit of the King, and committed to the Gaole; here, if the Gaoler ſuffer him to eſcape, the party ſhall have an action of debt againſt the Gaoler for this condemnation, and yet he was not committed to him at his ſuit, but at the ſuit of the King: Howbeit, within the yeare after the condemnation and judgement given, this ſuit for the King ſhall ſerve as well for the party as for the King, becauſe the King was entitled to it by the party, for his ſuit and judgement was the cauſe of the Kings fine: It is otherwiſe after the yeare, becauſe it will be intended they are agréed, and then the party is put to his Scire facias, &c. *Capias pro fine*

Co.Inſt.pars 2 245.b.2. 65 If a Baſtard eigne after the deceaſe of the father entreth, and the King ſeiſeth the land for ſome contempt ſuppoſed to be committed by the Baſtard, and the Baſtard dies, and his iſſue is upon his petition reſtored to the poſſeſſion, for that the ſeiſure was without cauſe; In this caſe, the Mulier is barred for ever; for the poſſeſſion of the King, when he hath no cauſe of ſeiſure, ſhall be adjudged the poſſeſſion of him, for whoſe cauſe he ſeiſed: But if after the death of the father the Mulier be found heire and within age, and the King ſeiſeth; In that caſe, the poſſeſſion of the King is in right of the Mulier, and veſteth the actual poſſeſſion in the Mulier, for that ſhe was the cauſe, that occaſioned the ſeiſure, and conſequently the Baſtard eigne is in ſuch caſe fore-cloſed of any right for ever: So it is likewiſe, when the King ſeiſeth for a contempt or other offence of the father or any other anceſtor; for in that caſe alſo, if the iſſue of the Baſtard eigne upon a petition be reſtored, for that the ſeiſure was without cauſe, the Mulier is not barred, for the Baſtard could never enter, and conſequently could gaine no eſtate in the land, but the poſſeſſion of the King ſhall be adjudged in the right of the Mulier, and the rather for that the father or other anceſtor of the Mulier was the cauſe of the ſeiſure. Baſtard *Mulier*

Dyer 100.a.40 1 Mar. 66 If the King grant land by Charter probis hominibus villæ de Iſlington, rendring rent; this is a good and perpetual Corporation for that intent, but if the King releaſe or give them the rent and fee-farme, Kings Charter.

ſt

it ſeemes the Corporation is ipſo facto diſſolved, for the rent and farme were the cauſe of their incorporation.

22. Cujus eſt dare ejus eſt diſponere.

A proviſo imports a condition.

1 A. bargaines and ſels the Manors of D. (unto which an Advowſon was appendant) with the appurtenances unto B. and his heires, provided alwayes, that B. regrant the Advowſon to A. during his life; B. dies, not having regranted the Advowſon to A. who entres for the Condition broken: Here, whereas it was amongſt other things objected, that this Proviſo could not import a Condition, becauſe the Bargainor did onely covenant with the Bargainée, and therefore the Bargainée ſhould alſo be underſtood onely to Covenant with the Bargainor, and ſo that Proviſo onely to import a Covenant and not a Condition; It was reſolved, that it had the force of a Condition; becauſe it was not unjuſt or unequal, that the Bargainor from whom the land moved, ſhould annex what Condition ſoever he pleaſed to the eſtate of the land: for Cujus eſt dare, &c. Co.l.2.71.b.2 The Lord *Cromwels* caſe.

Feoffment to the uſe of a Will.

2 If a man ſeiſed of lands in fée makes feoffment to the uſe of ſuch perſon and perſons, and for ſuch eſtate and eſtates, as he ſhall appoint by his will; here, by operation of Law the uſe reſts in the feoffor, and he is ſeiſed of a qualified fée, viz. until declaration and limitation be made according to his power: ſo alſo when a man makes feoffment to the uſe of his laſt will, he is in the mean time ſeiſed to the uſe of himſelfe and his heires. Co.l.6.18.a.1. Sir *Edward Clere's* caſe.

Legiantia naturalis & acquiſita.

3 Legiantia naturalis may be properly ſaid to be pura & indefinita, but Legiantia acquiſita, may be limited according to the will of the King that grants it, as to an alien and his heires, or to him and the heires of his body, or to him for life onely, or upon Condition, &c. for Cujus eſt dare, &c. Co.l.7.5.b.4. *Calvins* caſe.

A ſtranger may take advantage of a condition.

4 If A. grants lands to B. for life, the remainder to C. for life, and if C. die, living B. that then they ſhall remaine to D. for life: here, although it was objected, that the remainder to D. was void, becauſe limited to commence upon a Condition, whereof none can take advantage but parties; yet it was adjudged good; For that God hath committed all worldly things to the order and diſpoſe of men; ſo that when any lawfully enjoy ſuch things, he may order or convey, or give them where, when, and how he pleaſeth according to his intent and meaning, ſo that his intent be not againſt Law, againſt Reaſon, or repugnant: And therefore in this caſe when the Leſſor appoints the remainder to the Defendant in ſupra, his intent is plainly diſcovered thereby, and reaſon requires that his intent ſhould be performed, viz. that the remainder ſhould take effect in manner and forme as he hath appointed. Plowd.24.b.4. & 31.a.4. *Colthrift*, and *Beinſbin*, ibid. 34.b.1.

Liberty given to the tenant to pay which he will.

5 If there be Lord, and Tenant, and the Lord holds by a Capon, or an Egge, or 12 d. rent, Here the Lord ſhall not come to the land and take a Capon, an Egge, or 12 d. being arrere, although he find it there, but the onely remedie is to diſtrein for it; Howbeit in that caſe if the Tenant have 20 Capons, 20 egges, or 20 s. of ſilver, it is in the power of the Tenant to give the Lord which Capon, Egg, or twelve pence he pleaſeth: So that the liberty is not given to the Lord to take, which of them he will; but to the Tenant, who is to pay the thing. Plowd.96.a.4. *woodlands* caſe.

Heirlooms, &c. by aſſignment.

6 The Leſſor covenants, that the Leſſee ſhall have ſufficient Hedge-bote, &c. by the aſſignement of the Leſſors Bailiffe: Here, it was ſaid (by Baldwin and Fitzherbert) that the Leſſee might take ſuch bote Dyer 19.119. 28 H.8.

boots by the Common Law, and therefore that he might take them without assignement, because it is no more than what the Law gives the Lessée privilege to do: but Shelley contrà, because it being in the Lessors power to grant the lease upon what termes he pleased, the Lessée shall be bound by it, albeit the covenant be in the Affirmative and onely on the Lessors part, and not in the Negative (by way of Covenant or Proviso) on the Lessées part: For Modus & conventio vincunt legem, and the Lessée accepted of the Lease upon those termes. Quere.

Dyer 136. Pl. 17. 3,4, P.M.

7 The uses of a fine or recovery may be declared by Indenture or otherwise, as well after as before such fine or recovery; for so in Arthur Bassets case 3,4. P.M. the uses of a Recovery were by the Indentures declared four yeares after the Recovery, and held good enough; for Cujus est dare, &c. Uses of a Recovery.

23 Ultra posse non est esse, & *Vice Versa*.

Co. l. 6 58. a. 4. in *Bredimans* Case.

1 A Right (without any estate in Possession, Reversion or Remainder) for which good remedie by actions given, is not to be esteemed Assets before it be recovered, and reduced into possession. So likewise an estate (as in rent-seck,) which descends, and for which the heir hath no remedie, is not Assets, untill he hath gained seisin; for, want of right & want of remedie are in the same equipage: and therefore a man shall not be remitted to a Right, that is remedilesse, as appeares in the Marquesse of Winchesters case in the third Report: And in M. 12. and 13. El. betwixt Terling and Trasford it was adjudged, that the Reversion expectant upon an estate taile was not Assets; because it lay in the Will of the Tenant in Taile to docke and barre it at his pleasure, and the Reversioner had no power to prevent it. A right or remainder after an entail no assets.

Co. l. 7, 8. a. 3. The Earle of *Bedfords* case.

2 In the Earle of Bedfords case in the 7 Report, when voydable Leases, being voyd for a time, shall be allwayes avoided, and when not, this diversity was taken and resolved by the Court, viz. when the interest of him, that makes the avoidance, is but for part of the terme; So that it appeares there remaines yet a residue, and when he, that makes the avoidance, avoides all the interest, so that it appeares no residue can remaine: As in the principal case there, which was to this effect, Tenant in Tail of lands in Capite makes Leases not warranted by the Statute of 32 H. 8. 28. and dies, his heire under age; Here, the King in right of the heir may avoid those Leases during his time onely; for, after the interest is determined, the heire may make them good againe by acceptance of the rent: So it is also of a Subject, that is Guardian in Chivalry: Also if a Bishop since the Statute of 13 El. let voidable Leases and die, the King during the vacancy may avoid them; but the Successor may make them good againe by acceptance of the rent: But if the Patron of the Church of D. grant the next avoidance to another, and after and before the Statute of 13 El. the Parson, Patron and Ordinary make a Lease for yeares reserving rent, and the Parson dies, the Grantée presents his Clerk, who is admitted, instituted and inducted, and dies: this lease was absolutely avoided and could not stand good against the second successor, &c. Voidable Leases made good by acceptance, it is otherwise of void things *ab initio*.

2 E. 3. 8.

Co. l. 5. 12. b. 2. *Sanders* case.

3 If a man having land in which there is a Cole mine (not open) lets the same to another for terme of life or yeares, if the Lessée grant unto another all his interest in the land cum omnibus profic. &c. (except & semper reservat, sibi & hæredibus suis toto benefic. & profic. Miner Angl. An exception of great timber, Mines, &c. void.

Angl. Cole mines prædict. parcel terræ ac omnibus arboribus Mærearii, &c. This exception is void, for by the exception of the profits of the Mine or of the Mine it ſelfe the land is not excepted, and then (by conſequent) he hath excepted that, which he cannot have or take: As if a man aſſigne over his terme, except the Timber-trees growing upon the land, or the marle, or the clay within the ground, this is voide; for he cannot except a thing, which doth not by Law belong unto him.

Where no intereſt, no entry

4 If the Baron within age make feoffment in fée of his Wifes land, and dies, his heire ſhall not enter to avoide this feoffment, becauſe nothing deſcended unto him from the Baron; for the Law doth not reſpect what eſtate the Anceſtor granted, but what eſtate he had before the grant, and what right or title the Anceſtor left to deſcend to the heire: And therefore if an infant being tenant in taile make feoffment in fée, and die without iſſue, his collaterall heire cannot enter to avoide that feoffment; for although by his feoffment he granted Fée ſimple, yet, when he died without iſſue, nothing deſcended to the heire, in reſpect of which he might enter: So alſo if lands be given to one and the heires female of his body, and he hath iſſue a ſonne, and makes feoffment in fée, and dies within age without iſſue female, the ſonne ſhall not enter for the ſaid infancy, becauſe no right in that caſe deſcended unto him: So likewiſe if an infant be tenant pur auter vie, and make feoffment in fée, Ceſtuy quæ vie, die, neither the infant nor his heire ſhall ever enter upon the feoffée, but he in the reverſion or remainder, &c. Co.l.8.43.b.1. *whittinghams* Caſe.

Diſcontinuance.

5 An eſtate taile cannot be diſcontinued, but where he, that made the diſcontinuance, was once ſeiſed by force of the taile (except it be by reaſon of warranty, &c.) according to the Rule in Philoſophy, Omnis privatio preſupponit habitum: for he cannot diſcontinue that, which he never had. Neither can a perſon diſcontinue the Fée ſimple of his Parſonage; becauſe the intire fée and right thereof was never in him. Vide M. 52. Ex. 8. Co.Inſt. pars 1 338.b.4.

Remainder of no void.

6 If I grant a rent out of my land, the remainder in fée, this remainder is voide, becauſe the rent was newly created by the grant, and not in eſſe before. In Colth. and Biviſhams caſe. Pl.Com.35.2.

Rent not extinct.

7 A man makes a Leaſe for terme of life, and afterwards the Leſſor makes a Leaſe of the ſame land for 20 yeares, rendring rent, the terme to begin after the death of Leſſée for life, afterwards Leſſée for life grants his eſtate to the Leſſor, who during the life of the tenant for life makes feoffment to a ſtranger in fée, who ſuffers a recovery, and Leſſée for life dies, and for the rent avowry was made by the recoverors, and the queſtion was whether or no the rent was extinct by the feoffment, and the better opinion ſeemes to be, that it was not extinct, becauſe it was not in eſſe at the time of the feoffment made. Dyer 31.2.210

Abbot, &c. diſclaim, barre to the ſucceſſor.

8 If an Abbot, Prior, Biſhop, or other ſole Corporation levie a Fine or acknowledge the Action in a Præcipe quòd reddat, the Succeſſor ſhall be bound pro tempore, but he may have a Writ of Right, and recover the land: Howbeit in a Quo warranto at the ſuit of the King againſt an Abbot, Biſhop, or, &c. for Franchiſes and Liberties, if the Abbot, &c. diſclaime in them, this ſhall binde the Succeſſor; So likewiſe if an Abbot, &c. acknowledge the Action in a Writ of Annuity, this alſo ſhall binde the Succeſſor, becauſe he cannot ſalliſie it in an higher Action. Vide ſupra M. 1. caſe 4. Co.Inſt.pars 1 103.a.1.

24 Nemo poteſt plus juris ad alium transferre quàm ipſe habet.

Co.Inſt.pars 1 265.a.2. Littl. § 446.

1 Theſe words which are commonly put into releaſes, viz. (quæ quovis modo in futurum habere potero) are as void in Law; for no right paſſeth by a releaſe but the right, which the Releaſor hath at the time of the releaſe made; And therefore if there be father and ſonne, and the father be diſſeiſed, and the ſonne living (the father) releaſeth by his deed to the diſſeiſor all his right, which he hath or may have in the ſame tenements, without clauſe of Warranty, &c. and after the father dieth, &c. The ſonne may lawfully enter upon the poſſeſſion of the diſſeiſor; becauſe he had no right at all at the time of the releaſe made, all the right being then in the father; and therefore in this caſe after the deceaſe of the father, the ſonne may enter into the land againſt his owne releaſe; for, Nemo poteſt plus juris, &c. A releaſe before intereſt void.

Co.ibid.275.b. 3.

2 If Tenant in Fée ſimple being diſſeiſed by two releaſe to one of his diſſeiſors, he to whom the releaſe is made ſhall hold out his Companion; becauſe the right of the diſſeiſée, and the eſtate gained by the diſſeiſor are of equal extent; viz. both in Fée ſimple: but if Tenant for life be diſſeiſed by two; and he releaſe to one of them, this ſhall enure to them both: becauſe Tenant for life by his releaſe can but convey unto them his own eſtate: and by conſequent he, to whom the releaſe is made, hath a longer eſtate than he that releaſeth, and therefore ſuch a releaſe cannot enure to him alone, to hold out his companion; For then ſhould the releaſe averre by way of entry or grant of his eſtate, and conſequently the diſſeiſor, to whom the releaſe is made, ſhould become Tenant for life and the reverſion reveſted in the Leſſor, which ſtrange tranſmutation and change of eſtates in this caſe the Law will not ſuffer. Releaſe to diſſeiſors enures onely to one of them.

Co.ibid.276. a.3.

3 If two Joyn-tenants in Fée ſimple be diſſeiſed by two, and one of the diſſeiſées releaſeth to one of the diſſeiſors all his right, he ſhall not hold out his companion; becauſe he had but power to releaſe a moity. By Joyn-tenants good onely to one.

Co.ibid.309. b.2.

4 If the Conſée of a fine before any attornment, by deed indented and inrolled, bargaineth and ſelleth the Seignior̃y to another; here the Bargainée ſhall not diſtreine, becauſe the Bargainor could not do it. No diſtreſs.

Co.ibid.314. a.3. Littl. § 562.

5 If there be Lord and Tenant, and the Tenant make a Leaſe to a man for terme of his life, ſaving the reverſion to himſelfe, and the Lord grant the Seignior̃y to the Tenant for life in fée, and lie in the reverſion attorne, as he ought, &c. In this caſe, ſome think, that the Tenant for life cannot grant the Seignior̃y over, becauſe he took it ſuſpended, and it was never In eſſe in him: but if the tenant make a Leaſe for life for or years to the Lord, there the Lord may grant it over, becauſe the Seignior̃y was In eſſe in him, and the Fée ſimple of the Seignior̃y was not ſuſpended; but if the Lord diſſeiſe the Tenant, or the Tenant enfeoffe the Lord upon Condition, there the whole eſtate in the Seignior̃y is ſuſpended; and therefore in that caſe he cannot during the Suſpenſion grant over his Seignior̃y. A Seigniory ſuſpended.

5 E.3. *Twongs* caſe.

Littl. § 619. Addition, but approved for law, *per Cooke.* Co.Inſt.pars 1 332.b.4.

6 If Tenant in taile let this land to another for yeares, and after grants the reverſion to a third perſon in fée, and the Tenant for yeares attornes to the Grantée, and the terme is expired during the life of the Tenant in taile, whereupon the Grantée enters, and after the Tenant in taile hath iſſue and dies; In this caſe, this No diſcontinuance.

grant

grant of the reversion makes no discontinuance, notwithstanding the grant is executed in the life of the Tenant in taile; because at the time of the Lease made for terme of yeares, no new Fée simple was reversed in the Lessor, but onely the reversion of the estate taile remained in him, in like sort as it did before the Lease made. Co.Inst.pars 1 332.b.4.

Joynt-tenants part moities.

7 If there be two Joynt-tenants, and the one is of full age and the other within age, and both they make a feofment in fée, and he of full age dieth, Here, the infant shall not enter into the whole, but shall enter or have a dum fuit infra ætatem for the moity onely; because no more could passe from him by the feofment. Co.ibid.337.b. 1.

An estray.

8 If an estray happen within the Mannor of the wife, if the husband die before seisure, the wife upon seisure shall have it and not the executors, because the property could not be in the husband before seisure, and therefore the executors could derive to themselves no title in it from the husband. 43 E.3.8;10. H.6.11.39. 8.5.17. Co.ibid.381.b: 2.

The heir not bound to warranty.

9 The heire shall never be bound to any exprese warranty, but where the Ancestor was bound by the same warranty; for if the Ancestor were not bound, it cannot descend upon the heire: And therefore if Tenant in taile seised of divisable lands, alien them in fée to his brother, who afterwards deviseth the same lands to another with warranty against him and his heires, and dies without issue; This warranty shall not barre the heire in taile of his Formedon; because this warranty did not descend to the issue in taile, for that the Uncle of the issue in taile was not himselfe bound to the warranty in his life time, neither yet could he warrant the Lands in his life time, in as much as the devise could not take effect till after his death: And now because the Uncle in his life time was not bound to warranty, such warranty cannot descend from him to the issue in tail, &c. For nothing can descend from an Ancestor to his heire; but that, which was first in the Ancestor: So likewise if a man make feofment in fée, and bind his heires to Warranty, this is void, as to the heir; because the Ancestor himself was not bound, &c. Littl. § 734. Co.ibid.385.b: 3.

Tenant in taile cannot grant any remainder of estate.

10 He in the remainde in taile bargains and sels his land, and all his estate, &c. by indenture inrolled, &c. to I.S and his heirs male, &c. to have and hold for the life of the tenant in taile the remainder to Quen Eliz. &c. Here, the remainder to the Queen is void; for when he in the remainder hath granted all his estate to I.S. he cannot limit any farther remainder of it to the Queen; because a remainder is but a remnant of the estate of the Grantor, and the Queen cannot have any such remnant of estate, when he had granted away all his estate before to to I. S. And therefore it was agreed Hill. 35. El. in Blithemans case, that if tenant in taile in consideration of fatherly love covenant by Deed to stand seised to the use of himselfe for his owne life, and after his death to the use of his eldest sonne in taile, and after this Covenant, the Covenantor takes feme and dies, in this case, the feme shall be endowed; for when tenant in taile hath limited the use to himselfe for his own life, he cannot limit any remainder over, because an estate for his own life is as long, as he himselfe can limit by the Law, and therefore the limitation of the remainder is void, and by consequent the Dower good, &c. Co.l.2.51.b.4: 52.a 2. Sir *Hugh Chomleys* case.

Entry taken away from issue in tail.

11 The Baron seised to the use of himself and his wife for life, and the heires of the body of the Baron dies; the issue in the life of the feme, then Tenant of the Frank-tenement (for so the pleading was) which shall be intended by disseisin, for no surrender or forfeiture was alleadged, 4 H. 8. suffers a common recovery with single voucher, by agréement, that the recoverors shall enfeoffe Littler and Co.l.3.61.a.3. *Lincolne* Colledge case.

others to divers uſes; and that the feme ſhall releaſe to them with Warranty, which was done accordingly: 11 H. 8. the feme dies, after that the iſſue dies, and afterwards his iſſue in the third degree enters; The queſtion was, whether the collateral warranty ſhall bind for the recovery came not in queſtion, becauſe by the pleading it ſhall be intended, that the iſſue was ſeiſed by another Title then the intaile, and ſo the ſingle voucher not material) or whether the warranty ſhall be adjudged void by the Statute of 11 H. 7. 20. And in this caſe it was reſolved, that the warranty ſhall bind the Demandant, and was not void by that Statute; becauſe when the firſt iſſue, by the common recovery (had againſt him by his own agreement) had diſabled himſelfe to take benefit of the forfeiture given by the Statute, after his death another iſſue claiming from him ſhall not take benefit of it; for if the Anceſtor, being in eſſe at the time of the forfeiture, could not enter, much leſſe ſhall any perſon, which was not in rerum natura, nor had the immediate intereſt, Title, or Inheritance at the time of the forfeiture, ever enter or take benefit of that Act: And although there was error in the recovery, yet the Warranty of the feme ſhall barre the firſt iſſue of his writ of Error, becauſe by his own act he hath barred himſelfe of the entry, which the Statute preſcribes; and the like in effect was adjudged in Sir Geo. Brownes caſe, where the iſſue in tail in the life of his mother, having the reverſion in fee, levies a fine without proclamations; for there the iſſue againſt his own fine could not enter, although it was erroneous. Co. ibid. 51. b. 2

Copihod Cuſtome.

12 Cuſtome hath ſo eſtabliſhed and fixed the eſtate of the Copiholder, that by the Severance of the Inheritance of the Copihold from the Manor, the Copihold is not deſtroyed; for in as much as the Lord himſelfe cannot oust the Copiholder, no more ſhall any claiming under him have power to do it; becauſe, Nemo poteſt plus juris, &c. Co. l. 4. 24. b. 1. *Murrel* and *Smiths* caſe.

A releaſe by bail not good.

13 In debt Marſhall was baile for the Defendant, and before Judgement, the Plaintiffe releaſeth to Marſhall all actions, duties and demands, and after judgement was given againſt the Defendant, upon whose default Scire facias iſſued out againſt Marſhall, who pleads the ſaid generall releaſe: but it was adjudged, that the releaſe was not effectual to barre the Plaintife, becauſe the words of the baile being conditional, viz. Si contigit Defend. &c. non ſolvere, &c. there cannot be by the baile any preſent and certaine duty, before judgement given: for before that, it cannot be knowen to what ſumme the debt and damages will amount; neither is he, that bailes, at firſt bound in any certaine ſumme, but his recognizance being generall, it ſhall be reduced to a certainty by the Judgement. Co. l. 5. 70. b. *Hoes* caſe. Co. Inſt. pars 1 265. b. 2.

A releaſe not good.

14 In Trin. 4. El. Rot. 1207. in Com. Banco, it was adjudged that by a releaſe of all actions, ſuits, and quarrels a covenant before the breaking of it is not releaſed; becauſe there is not any cauſe of action, nor any certaine duty before the breaking of it, &c. Co. ibid. 71. b. Dyer 5. El. 217.

Payment of rent by a termor no ſeiſin.

15 A. deviſeth rent to B. for life out of the Manor of D. and deviſeth the Manor it ſelfe to C. for yeares, C. enters and payes the rent during the term; but after the term the Terre-tenant refuſeth to pay the rent, whereupon B. brings an Aſſiſe: And in this caſe it was adjudged by Coke and the other Juſtices of the C. Pl. that the payment of the rent by the tenant for years was not ſeiſin to bind the Terre-tenant after the terme determined; becauſe (ex Etymologia & vi termini) he who hath not ſeiſin in the land charged, cannot give ſeiſin of the rent; for, Nemo poteſt plus juris, &c. And for the ſame reaſon a Præcipe lieth not againſt a Termor, becauſe he cannot render ſeiſin. Co. l. 6. 57. a. 4. *Bredimans* Caſe.

16 The Teſtator poſſeſt of a Will for 50 yeares deviſeth it to M. M. after

Acceptance a good barre.

after the death of his wife, who in the meane time was to have the occupation of it during her life, paying unto M. M. 7 l. per annum, and he makes his wife his executrix and dies, the wife administers, enters, and payes the rent: Here, the payment of the rent by the executrix was sufficient assent to the legacy, and then she having given her assent to the first devise, it lay not in her power to barre him, that was to have the future devise; for she could not transferre more to another, then she had her selfe; because after that (by her assent) she had executed the second devise, she could not afterwards otherwise dispose of it to discharge other Legacies, Debts, or the like, &c. Co.l.8.96.a.1. *Mannings* case

Remainder in tail of a lease, cannot grant it.

17 If A. possesse of a terme for 500 yeares deviseth it to B. for life, the remainder to C. and the heires of his body; in this case C. during the life of B. cannot grant the remainder to another; because the whole terme is in B. and C. hath but an executory interest, depending upon a possibility, viz. enjoy it after the death of B. But here, (B. being executor) a release of his interest to him is good. Vide supra 21. 41. *Lampets* case. Co.l.10.47.b.3 & l.4 66.b. *Fulwoods* case.

Release of a Coniee or heir apparent void.

18 If the Coniee of a Statute or Recognisance release to the Terre-tenant all his right in the land; yet he shall sue execution; because at the time of the release made he had no interest in the land; for that the body is the Debtor and not the land, but in respect of the body, and the land is not charged with the debt before execution sued; So likewise a release of the sonne to the disseisor of the father in the life of the father is utterly void; because the sonne hath no right at all in the life of his father. Vide supra 1. Co.l.10.50.b. *Lampets* case. 27E.3. *Execut.* 130. & 25 Ass. Pl.7. & Pl.Co. 72. Sir *Thomas Popes* case.

A joyn-tenant cannot grant but his moity.

19 Albeit Joyn-tenants are (by Littleton) said to be seised per my & per tout, yet can they not singly dispose of more, then the part, that belongs unto them, as to enfeoffe, give, or demise, or to forfeit or lose by default in a Præcipe: So likewise if my villein and another purchase lands to them two and their heires, I can but enter into the moity; And where all the Joyn-tenants joyn in a feofment, every of them in Judgement of Law doth give but his respective part: So if an Alien and a Subject purchase lands joyntly, the King upon office found shall have but a moity. Co.Inst.pars 1 186.a.2. Litt.§ 288.

The like.

20 If two Joyn-tenants make a feofment in fee upon Condition, and that for breach thereof one of them shall enter into the whole, yet he shall enter but into a moity, because no more in judgement of Law passed from him; And so it is also of a gift in tail, or a Lease for life, &c. Likewise, if two Joyn-tenants make a feofment in fee, and one of the Feoffors dies, the Feoffee cannot plead a feofment from the Survivor of the whole; because each of them gave but his part. Co.Inst.pars 1. Ibid.3. Plowd. *Brownings* case.

A confirmation of a rent void.

21 If a man grant a rent charge issuing out of his land to another for terme of his life, and after he confirmes his estate in the said rent, to have and to hold to him in Fee tails or in Fee simple, this confirmation is void, as to enlarge his estate; because he, that confirmes, had not any reversion in the rent. Littl. § 548. Co.Inst. pars 1 308.a.3.

Confirmation by Patron and Ordinary.

22 If the Parson of a Church charge the Glebe by his deed, and after the Patron and Ordinary confirme the same grant; in this case, if the Patron be Tenant in Fee simple, the grant is good; but if he hath the Advowson onely for life or in taile, then shall the grant stand no longer in force, than for his life, and the life of the Parson, that granted it: And in this case if the Bishop be Patron, he cannot confirme alone, but the Deane and Chapter must confirme also; For the Advowson or Patronage is parcel of the possession of the Bishopprick, &c. Littl. § 528. Co.Inst.pars 1 300.b.3.

Co. Inſt. pars 1 300. b. 3.

23 A Parſon of D. is Patron of the Church of S. as belonging to his Church, and preſents B. who by the conſent of A. and the Ordinary grants a rent charge out of the Glebe, this is not good to make the rent charge, perpetual without the aſſent of the Patron of A. &c. The like.

Co. ibid. 266. a. 3.

24 If the Donée in taile diſcontinue in fée, and the Donor releaſe to the Diſcontinuée and die, and after the iſſue in taile doth recover the land againſt the Diſcontinuée; In this caſe, the iſſue in taile ſhall leave the reverſion in the Diſcontinuée; for the iſſue in taile can recover but the eſtate taile onely, which deſcended unto him from his Father, and the Donor cannot have the reverſion againe againſt his own grant, and therefore (by conſequent) it ſhall be left in the Diſcontinuée, &c. Releaſe by Dower to the diſcontinuee.

Co. ibid. 8. a. 2, 3.

25 If an Alien cometh into England and hath iſſue two ſonnes, theſe two ſonnes are indigenæ Subjects borne; becauſe they are borne within the Realme: Howbeit, if one of them purchaſe lands in fée, and dieth without iſſue, his brother ſhall not be his heire; for there was never any inheritable bloud betweén the father and them, and where the ſonnes can by no poſſibility be heire to the father, the one of them ſhall not be heire to the other: And therefore ſome have holden, that if a man, after he be attainted of Treaſon, or Felony, have iſſue two ſonnes, that the one of them cannot be heire to the other; becauſe they could not be heires to the father, for that they never had any inheritable bloud in them, &c. Betwixt Brothers no inheritable bloud.

Co. Inſt. pars 1 a. 3.

26 If Leſſee for life make a Deed of feoffment, and a Letter of Attorney to the Leſſor to make Livery, and the Leſſor maketh Livery accordingly, notwithſtanding the Leſſor ſhall enter for the forfeiture, becauſe the Leſſor for life had a Frank-tenement in him, whereupon the Livery might work; but if Leſſée for yeares make a feoffment in fée, and a Letter of Attorney to the Leſſor to make Livery, and he make Livery accordingly, this Livery ſhall binde the Leſſor, and ſhall not be avoided by him; for the Leſſor cannot (in this caſe) make Livery as Attorney to the Leſſée, becauſe the Leſſée had no Freehold, whereof to make Livery, but all the Freehold was in the Leſſor. Leſſor attorney to leſſee to make livery.

Dyer 5. b. 14 26 H. 8.

27 A man ſeiſed of deviſable land before the Statute of Uſes, makes a Leaſe for yeares reſerving rent, and deviſeth that rent to a ſtranger and dies, and the ſtranger is ſeiſed of the rent and dies; In this caſe, the executors, and not the heire of the deviſée ſhall have the rent; becauſe the rent was but a Chattel in the deviſée. Rent deviſable.

Dyer 90. b. 8. 1 Mar.

28 If there be Leſſor and Leſſée, and the Leſſor ſells all his trées growing in ſuch a cloſe; Here, nothing paſſeth to the Vendée; for albeit the Leſſor hath a generall property in them, yet the ſpeciall property thereof is in the Leſſée; becauſe the wood and trees are parcel of the Leaſe, who ſhall by force of his Leaſe have the ſhade and fruit thereof, as alſo the branches, and loppings for fuel and mending of fences, And therefore if the Leſſor ſell trees without the licence or will of the Leſſee, a good action of treſpaſſe lyeth for the Leſſée againſt him: So likewiſe in 5 H. 4. 59. the heire in Chivalry being in ward, ſells trées in the land in ward, and the Guardian brings treſpaſſe againſt him; and he pleads the ſpecial matter in barre. Sed non allocatur per curiam, &c. Trees ſold by the Leſſor.

25 *Things are construed according to that, which was the beginning of them.* Vide Max. 63. 21.

Judge of Law by the Office.

1 Tenants after possibility of issue extinct, although upon the matter he be but a Tenant for life, yet hath he 8 priviledges incident to his estate, which the Law alloweth not to a bare Tenant for life; in respect of the inheritance, which was once in him, which priviledges you may see, Co. In. part 1.28. a. 2. Co.Inst.pars 1 28.a.2.

Like.

2 If a woman Tenant in taile general taketh an husband and hath issue, which issue dieth, and the wife dieth also without any other issue; there, albeit the estate in tail be determined, yet shall the husband be Tenant by the Curtesie; because he was intitled to be Tenant per Legem Angliæ at first (upon having the issue) before the estate in taile was spent: And although in this case the estate be not consummate until the death of the wife, yet it hath such a beginning after issue had in the life of the wife, as is respected in Law for divers purposes; for 1 After issue had he shall do homage alone, and is become Tenant to the Lord, and the Avowry shall be made onely upon the husband in the life of the wife; 2 If after issue [a] the husband maketh a feofment in fee, and the wife dieth, the feoffee shall hold it during the life of the husband, and the heire of the wife shall not during his life recover it as a sur cui in vita; for it could not be a forfeiture; because the estate, at the time of the feofment, was an estate of tenancy by the Curtesie initiate, and not consummate: And it is adjuged in 29 E. 3. that the Tenant by the Curtesie cannot claime by a Devise, and waive the estate of his tenancy by the Curtesie; because (saith the Book) the Freehold commenced in him before the Devise for terms of his life. Co.Ibid.30.a.1

[a] 34 E.2. *Cui in vita* 13. 2 E.2. *Cui in vita* 26. 10 E.3.12. Dyer 21. El.363. 29 E.3.27.

A Voyage Royal.

3 When the King makes Voyage Royal into Scotland to subdue the Scots, the Law accompteth the beginning of the forty dayes to be after the King entreth into the forreigns Nation, for then the Warre beginneth, and till he come there, he and his host are said to go towards the Warre, and no military service is to be done, till the King and his host come thither. Co.Ibid.71.a. 4. Litt.§ 96. Co.Ibid.70.a.1 Co.Ibid.108. 2.4. Vide infrà 10. &c. M.43.12.

Tenure in Capite.

4 If one holdeth land of a common person in grosse as of his person, and not of any Manour, &c. and this Seigniory escheateth to the King (yea, though it be by attainder of Treason) he holdeth of the person of the King, but not in Capite; because the original tenure was not created by the King. 3 E. 3. B. tenures 94. 30 H. 8. 43. 28 H. 8. B. livery 57, &c. Co.Ibid.164.a. 4. &c. Bracton l.1.c.66 Britt.cap.71. Fleta l.5.c.9. & 6.c.47.

Descent in Capite & Stirpes.

5 In case of Coparseners, sometimes the descent is in Stirpes, viz. to Stocks and Roots, and sometimes in Capita, to Heads; As if a man hath issue two daughters and dieth, this descent is in Capita, viz. that each daughter shall inherit alike, as Littleton saith, Sect. 241. But if a man hath issue two daughters, and the eldest daughter hath issue three daughters, and the youngest but one daughter; All these four shall inherit, but the daughter of the youngest shall have as much as the three daughters of the eldest, Ratione Stirpium, in respect of their mothers estate, from which theirs took beginning, and not Ratione Capitum; for in judgement of Law every daughter hath a severall Stock or Root. So if a man hath issue two daughters, and the eldest hath issue divers sonnes and divers daughters, and the youngest hath issue divers daughters, the eldest sonne of the eldest daughter shall onely inherit, and all the daughters of the youngest; for this also is not in Capita, but in Stirpes; and in this case the eldest sonne is Coparce-

ner

ner with the daughters of the youngeſt, and ſhall have one moity, viz. his mothers part: So that men deſcending of daughters may be Coparceners, as well as women, and ſhall joyntly implead and be impleaded, &c. Vide 26. 2.

Litt. § 292. Co. ibid. 178. b. 2.

6 The Lands in Frank-mariage to be put into Hotchpot, and the Lands in Fée ſimple which deſcend, ought to move from one and the ſame perſon; for if they moved from ſeveral Anceſtors; they cannot be put into Hotchpot, &c. Frankmariage Hotchpot.

Co. ibid. 187. a. 4. 39 H. 6. 45. 21 R. 2. judg. 63. M. 33. E. 3.

7 If Lands be given to a man and a woman and their heires before mariage, the husband and wife have moities between them: but if it be after mariage, each of them taketh the whole; And therefore in this laſt caſe, if the husband be attainted of Treaſon, or ſelleth away the land, after her husbands death, ſhe ſhall recover the whole; as it fell out in the caſe of William Ocle, who was attainted for murthering, E. 2. Finch. 41. Lands given to Barre and feme.

Co. ibid. 209. b. 2. 18 E. 4 18. 19 H 6. 54. 20 E. 3. account Pl. 70.

8 In a Mortgage the agréement precedent ought to guide the payment ſubſequent, and therefore in caſe the feoffée die, and it is agréed between the feoffor and the executors of the feoffée, that at the day and place the whole ſum ſhall be paid, and that afterwards ſome part thereof ſhall be reſtored, this is no performance of the Condition; for hereby the ſtate ſhall not be deveſted out of the heire, which is a third perſon, without a true and effectual payment, and not by a ſhadow and colour of payment. Co. l. 5. 96. Goodales caſe. The condition of a mortgage muſt be performed.

Co. ibid. 248. b. 1. Litt. § 410. Pl. Co. Dame *Hales* caſe. 6 E. 3. 41. &c.

9 Littleton ſaith, that a deſcent, which happens upon the diſſeiſors entring into Religion, ſhall not take away the entry of the heire: yet his entry into Religion is not the cauſe of the deſcent, but his profeſſion; for albeit he enter into Religion, yet before he be profeſt no deſcent can happen; But in this caſe the Law doth reſpect the original act, and that is his entry into Religion, which was his own act, and whereupon the profeſſion followed, by which profeſſion the deſcent hapned; for, Cujuſque rei potiſſima pars, principium eſt, And againe, Origo rei inſpici debet; and therefore Littleton attributeth the cauſe of the diſcent rather to the diſſeiſors entring into Religion, which was the firſt act to procure a deſcent, than to his profeſſion, which followed thereupon. Deſcent by entry into Religion.

Co. ibid. 372. b. 3. T. 23 El. in the Court of Wards.

10 To prevent the barring of an eſtate taile, when the reverſion is in the King, according to the Stat. of 34 H. 8. 20. it is neceſſary that the eſtate taile ſhould be created by a King, and not by any Subject, albeit the King be his heire to the reverſion: And therefore if the Duke of Lancaſter had made a gift in taile, and the reverſion deſcended to the King, yet was not that eſtate reſtreined by that Statute, and ſo of the like. Co. l. 5. 15, 16. in Wiſemans caſe. Vide 21. 8. An entail, and the reverſion in the King.

33 Aſſ. Pl. 7.

11 If a ſervant (departed out of his Maſters ſervice) kill his Maſter upon a malice that he bare him, whileſt he was his ſervant, it is petty Treaſon. Finch 10. Malice prepence.

10 El. Dyer, 266. b.

12 A erects a Shop upon the Kings Freehold, the King grants the land to B. in fée, A. before entry or ſeiſure of the Shop by the Kings Patentée, continueth the poſſeſſion and dieth ſeiſed: This is no deſcent to toll the Patentées entry: For by his firſt erecting of the Shop he could gaine nothing againſt the King. Finch 11. No poſſeſſion againſt the King.

Co. lib. 2. 93. a. 3. *Binghams* caſe. 6. E. 3. 410.

13 It was ſaid in Binghams caſe in the 2 Report, that when divers accidents are requiſite to the conſummation of a thing, the Law in many caſes reſpects rather the beginning and original cauſe, then any thing elſe, As in 6 E. 3. 41. if a man preſent to another mans Church in the time of warre, and thereupon the preſentée is admitted, inſtituted, and inducted in time of peace; Here, the Law gives ſuch The original act conſiderable.

such regard to the original act, viz. the presentation, that all, which followes thereupon, although it be done in time of peace, shall be avoided; And upon the same reason was Shelleys case adjudged in the 1 Report fol. 106. Co.l.1.106. *Shelleyes* case.

Gift by baron without feme, not good.

14 If land be given to Baron and Feme, and to the heires of their two bodies engendred, and the Baron alone suffers a common recovery, this shall not bind the estate tayle; And albeit in this case the Baron, which suffers the recovery survives the Feme, that is not material; for the Law shall judge upon the case, as it was at the time of the recovery. Co.l.3.5.b.3. *Owen* and *Morgans* case. Co.l.3.34.b.4. *Butler* and *Bakers* case.

Tenure according to limitation.

15 If Land be given to a man and his heires to hold by Socage during his life, and after his decease to hold by Knight-service; there shall be no ward, because the tenure by Knight-service begins in the sonne, and the Father during his life holds by Socage: And è converso, if lands be given to a man and his heires to hold by Knight-service during life, and after his decease in Socage; there likewise shall be no ward, because immediately upon the death of the tenant, the Knight-service determines, and then also the tenure in Socage begins in the sonne. Littl. § 698, 699, 700.

Warranty that begins by disseisin, no good

16 If the sonne purchaseth lands, and letteth the same to his father for terme of yeares, the father enfeoffes another in fee, and binds himselfe and his heires to warranty, the Father dies, by which the warranty descends to the sonne; this warranty shall not barre the sonne from his entry or recovery by assise, &c. because this warranty begins by disseisin: In like manner is it, if the father or any other Ancestor be tenant at will, by Elegit, by Statute Merchant, or Statute Staple, and make feoffment with warranty as aforesaid, &c. Such warranty shall not barre, because it begins by disseisin, &c. There is the same reason of Guardein in Knight-service, as in Socage, which make such feoffment with warranty. So also if the father and sonne be Joynt-tenants in fee, and the father make feoffment with warranty, &c. and dies; this shall not barre the sonne of his moity, causa quæ supra. Co.l.4.37.a. *Tirringhams* Case.

Common appendant, due of common right.

17 The beginning of common appendant by the ancient Law was in this manner; when the Lord of a Mannor did enfeoffe a man of arable land to hold of him in Socage, viz. per servitium Socæ (as every such tenure at the beginning, as Littleton saith, was) the feoffee ad manutenendum servitium Socæ, was to have Common in the Lords waste for such necessary beasts, as were to plow and compasse his land; and therefore such Common appendant is one of common right, and begins by operation of Law, and in favour of tillage; so that none need prescribe in it, as it is held in 4 H.6. and 22 H.6. as a man would, if it were against common right. And this is the reason, that it is commonly appendant to ancient arable land Hide and Gaine, and meet for Horses, Oxen, Cowes, and Sheep, whereof the first two serve to till the land, the other to compasse it; And therefore it is against the nature of such Common to be appendant to Meadow or Pasture, and if a man will prescribe to have Common belonging to a Meale, Meadow and Pasture, this cannot be Common appendant, but appurtenant; unlesse he having Common appendant belonging to land, hath of late time peradventure built an house upon it, and converted it to Meadow and Pasture for his convenience, and the better advancement of tillage, which was the original cause of the Common. For in this case the Common remaines appendant, and it shall be intended in respect of the continual usage of the Common in such manner, that at the beginning all was arable; but in pleading he ought to prescribe to have it appendant to the land, &c. 37 H.9.34. *per totam curiam.* 29 H.8.4.

18 The

Co.l.4.117, 118. *Altons* case.

18 The Baroneſs of Monteagle in her widoow-hood retains one Cartmel to be her Chaplein, according to the ſtat. of 21 H.8. Cartmel hath the benefice of Claycotton above 8 l. per annum, the Baroneſs takes to husband Sand the Lord Compton, and afterwards Cartmel having obtained a diſpenſation with Confirmation, &c. is admitted, inſtituted, and inducted to the vicarage of G. Here, becauſe Cartmel accepted of the vicarage, when the Baroneſſe was covert Baron, being maried to one not under the degrée of a Baron (for in caſe of ſuch mariage a Proviſo of that Statute ſaves the privilege of a Baroneſſe) the queſtion was whether the firſt benefice was not void: And it was reſolved, that Cartmel after the mariage might have a diſpenſation, and thereupon might have another benefice without danger of loſing the firſt; for although a Baroneſſe maried to a Pére cannot during the Coverture retaine a Chaplain, yet when a Baroneſſe being a widdow hath retained one or two Chaplains according to the Statute, this retainer is the principal matter, which at firſt had good beginning, and ſo long as the Baroneſſe continues a Baroneſſe, the Chaplains may well accept two benefices by the expreſſe letter of the act; for it ſufficeth that at the time of the retainer the Baroneſſe was a widoow; becauſe, by that the expreſſe words (being widdow) are ſatisfied.

A Baroneſs may retein Chaplains in her widdowhood.

Co.l.6.43.b. *Blakes* caſe.

19 Eden brings a writ of Covenant againſt Blake for not repairing an houſe, the Defendant pleads accord betwixt him and the Plaintife, and execution of it in ſatisfactione, &c. decaſus reparationum prædict. upon which the Plaintife demurres; Here, albeit it was objected, that this action of Covenant being founded upon the Déed, could not be diſcharged without matter of as high nature, viz. by Déed, and not by any accord or matter in pais; yet it was reſolved per totam Curiam, that the plea of the Defendant was good; For there is a diverſity, when a duty accrues by the Déed in certainty, tempore confectionis ſcripti, as by Covenant, Bill or Obligation to pay a ſumme of money; here, this certaine duty takes his eſſence and operation originally and onely from the writing: and therefore ought to be avoided by matter of as high nature, viz. by writing; but when no certaine duty accrues by the Déed, but a wrong or default ſubſequent together with the Déed do give action to recover damages, which are onely in the perſonalty, for ſuch wrong or default accord with ſatisfaction is good plea.

Accord with ſatisfaction good plea.

Co.l.7.10.a.1. *Vghtreds* caſe. Pl.Co.32.b.3. *Colthrift* and *Beviſham per Hinde.*

20 In all caſes when an intereſt or eſtate commenceth upon a Condition precedent, there the plaintife ought to ſhew it in his count, and averre the performance of it; for there the intereſt or eſtate commenceth in him by the performance of the Condition, and is not in him till the Condition be performed: It is otherwiſe when the intereſt or eſtate paſſeth preſently by veſting in the Grantée, and is to be defeated by matter ex poſt facto, or Condition ſubſequent; for there the Plaintife may count generally without ſhewing the performance of it, and the Condition or matter ex poſt facto ſhall be pleaded onely by him, that will take advantage of it. Vide ſuprà 21. 36.

Conditions precedent and ſubſequent.

Co.l.9.25.b.3. In the caſe of the Abbot *de Strata Mercella.* 6 E.3.32. *Jo. Darcies* caſe. 30 H.8.By.44. 43 E.3.32. 43 Aſſ.Pl.10. 1,2.Ph.M.

21 When the King grants any Privileges, Liberties, Franchiſes, &c. which were ſuch in his own hands, as parcel of the flowers of his Crowne (ſuch as are Bona & cattalla felonum, fugitivorum, utlagatorum, &c. bona & cattalla waviata, extrahur' deodanda, wreccum maris, &c. within ſuch poſſeſſions; Here, if theſe come againe unto the King, they are drowned in the Crowne, and he hath them againe in jure Coronæ; but when a Privilege, Libertie, Franchiſe, or Juriſdiction was at the firſt erected and created by the King, and was

Franchiſes ſhall not die.

was no ſuch dower before in the Garland of the Crowne; here, by the acceſſion of them againe to the Crown, they are not extinct, nor the appendance of them ſevered from the poſſeſſions: As if a Faire, Market, Hundred, Leet, Parke, Warren, or the like; are appendant to Mannors, or in groſſe, and after they come againe to the King, they remaine (as they were before) in eſſe not drowned in the Crown; for at firſt they were created, and newly erected by the King, and were not in eſſe before, time and uſage having made them appendant: And this diverſity was agreed per totam Curiam, 11 H.4. 5. 15 E.4.7. 4 E.3.42. 10. H.7.21.

A Charter to be interpreted, as the law was when it was made.

22 When an ancient grant is general, obſcure, or ambiguous, it ſhall not be now interpreted, as a Charter made at this day; but it ſhall be conſtrued, as the law was taken at the time, when ſuch ancient Charter was made, and according to the ancient allowance upon record, 33 Hen.6.22. 10 Hen.7.13. & 14. 16 Hen.7.9. 12 Hen.4.12. 14 Hen.6.12. 35 Hen.6.54. 9 Hen.7.11. 6 E.3.54 & 55. 7 E.3.40. & 41. 18 E.3. Coniſance 39. 34. Aſſ. 14.40. Aſſ. 21. Co.ibid.18.a.3

A Coparcener being outlawed by the other partners, ſhall hold, as before.

23 If there be two Coparceners, and the one diſſeiſeth the other, and the Diſſeiſee bringeth an Aſſiſe, or if the one Coparcener recover againſt the other in a Nuper obiit, or a rationabili parte, it hath been ſaid by ſome, that the Judgement ſhall be, that the Demandant ſhall recover and hold in ſeverality: but Britton is to the contrary; for he ſaith, Et ſi aſcuns des parceners ſoit enget ou diſturbe de ſeiſinie per ſes autres parceners; Un ou pluſors, al diſſieſi vaudra aſſiſe per ſeverale pleynte ſur ſes parceners, & recovera; Mes veny a tener en ſeveralty, mes en comune, ſelon ceo que evant le fiſt; Et ſi deux parceners ou pluſors ſoyet diſſeiſies per les autres parceners, cheſcun parcener avera ſa aſſiſe en ſeveralte, & recoverout a tene en comune, & tout iſſint ſerra juge en touts autres breſs de poſſeſſion entre parceners, &c. And this ſeemeth reaſonable; for ſhe muſt have her Judgement according to her playnt, and that was of a moity, and not of any thing in ſeverality; and the Sheriffe cannot have any Warrant to make any partition in ſeverality, or by Metes, or Bounds. Co.Inſt.pars 1 167.b.2. Bracton l.4. fol.216. Britt.f.112.a. Ibid.vide Parl. author.

Joyn-tenants ſhall do the like.

24 If one Joyn-tenant or Tenant in Common diſſeiſe another, and the diſſeiſee bring his Aſſiſe for the moity; in this caſe, though the Plaintiffe prayeth it, yet no Judgement ſhall be given to hold in ſeveralty; for then at the Common Law (before the Statutes of 31 H.8. cap.1. and 32 H.8. cap.32. by which they are compellable to make partition) there might have been by compulſion of Law a partition between Joyn-tenants and Tenants in Common; but that could not be; becauſe by the Rule of Law the Plaintiffe muſt have Judgement according to his plaint and demand, which was of a moity, and not of any thing in ſeverality. Co.Inſt.pars 1 187.a.2.

Feoffor, Feoffee, condition, diverſity.

25 If a man make a feoffment in fee upon Condition that the Feoffee before ſuch a day ſhall re-enfeoffe the Feoffor, and the Feoffee take wife, entreth into Religion and is profeſt, or make feoffment in fee, in all theſe caſes the Feoffor may enter preſently before the day, yea, albeit before the day the wife die, the Feoffee be veraigned or take back the eſtate; for in all theſe caſes that diſability in the Feoffee gives to the Feoffor preſent advantage of re-entry; for the Feoffee being once diſabled is ever diſabled: Howbeit, it is otherwiſe in the caſe of the Feoffor; for if a man make a feoffment in fee upon Condition, that if the Feoffor or his heires pay a ſumme of money before ſuch a day, and the Feoffor commits Treaſon, is attainted, and executed, now is there a diſability on the part of the Feoffor, for he hath no heire, but if the heire be reſtored before the day, he may perform Co.Inſt.pars 1 221.b.3.

forme the Condition, as it was resolved in Sir Thomas Wiats case Trin. 18. Eliz. in C. B. Otherwise it is if such a disability hap grow̃e of the part of the Feoffee: And the reason of this diversity is, because the estate of the land did originally flow from the Feoffor, and therefore there remaines still in him an ayery right to have the land again: So it is also if the Feoffor enter into Religion and is professt, and before the day is deraigned, he may in that case also performe the Condition, causa quâ suprà.

Dyer 149.82. 3,4 Ph.M. Estate to Baron and Feme joyntenancy.

26 A feofment was made before the Statute of 27 H. 8. to the use of a man and a woman unmaried, and of the heires of their two bodies, and after they intermarrie, and after mariage, the husband bargaines and sells the whole land in fee to one of the Feoffees, and dies without issue, and after the Statute of 27 H. 8. is made, the feme claimes the whole by the survivour, as Tenant in taile after possibility, &c. And per Curiam, without argument, she shall have but a moitie; because the Baron and Feme had at first moities as Joyn-tenants, by reason of the Joyn-tenancie made before marriage, &c.

26 *A derived power cannot be greater than that, from which it is derived.* Derivata potestas non potest esse major primitiva.

Co. Inst. pars 1 162.b.2. Executors shal not recover arreares.

1 If there be Lord and Tenant, and the rent is behind, and the Lord grant away his Seignory and dieth, the executors shall have no remedie for these arrearages; because the Grantor himselfe had no remedie for them, when he died in respect of his grant; And the words of the Statute of 32 H. 8. 37. (which gives remedie for the recovery of arrearages of rent) are these (in like manner as the Testator might or ought to have done.) Et sic de similibus.

Co. ibid. 164.a. 4. Coparceners inherit alike.

2 If a man hath issue two daughters, and the eldest hath issue three daughters, and the youngest onely one daughter; here, all these shall inherit, but the three daughters of the eldest shall have no more, than the daughter of the youngest, viz. a moity; because they can enjoy no more, than she was to have, through whom they claime, and that is but a moity, &c. Vide suprà 25. 5.

Litt. § 435. The Attorney cannot do more then his Master.

3 The Attorney of one that is disseised cannot make claime off from the land, if the disseisee himselfe must have gone to the land. Finch 11.

Litt. § 583. Co. ibid. 321.b. 1. Sir *Moile Finches* case. Co. 6.68.b.3. A fine of a Seigniory not good without attornment.

4 If there be Lord and Tenant, and the Lord grants his Seignory by fine to another in fee; here, without attornment nothing passeth; And therefore in this case if the Cestuie die before attornment, his heire shall not have it; for the heire shall not be in any better estate, than his Ancestor was, from whom he derives his title: So also it is, if the Cestuie of a fine before attornment bargaine and sell the Seignory by Deed inrolled and enrolled, the Bargainee shall not distreia; because the Bargainor, from whom the Seignory moves had never actual possession.

28 Ass. Pl. 4. The Bailiff shall not say more then his Master.

5 The Bailiffe of a Disseisor shall not say, that the plaintife never had any thing in the land; for the Master himselfe shall not have that plea; because he is not Tenant of the Free-hold. Finch 11.

2 E. 4 16.

6 The servant shall be estopped to say, the Freehold is his Masters, by recovery against his Master, though the servant himselfe be a stranger to it; for he shall not be in better condition than he, in whose right he claimeth. Finch 11.

Tenant in tail in remainder cannot falsifie a recovery

7 A. is Tenant in taile, remainder to B. in taile, B. grants a rent charge; A. suffers a common recovery, and dies without issue; Here, the Grantee of the rent shall not have it; because he cannot falsifie the recovery, being suffered by one that could not be chargable with the rent; for if B. in the remainder cannot do it; may lesse the Grantee, that claimes under B. Co.lib.1.62. *Caples* case.

An Infant not remitted.

8 If a man by Covin disseise the Discontinuee of Tenant in taile with an intent to enfeoffe the issue in taile, being within age, although the Infant was not conscious of the Covin, &c. yet shall he not be remitted; because the Infant, that is in by him, who acted the Covin, shall be in the same plight with him, that performed the covenous act. 19 H.8.8. *per* six Justices. Co l.3.78.a. *Fermors* case.

A Copihold a firm estate.

9 Custome hath so established and fixed the estate of the Copiholder, that by the severance of the inheritance of the Copihold from the Manor the Copihold it selfe is not destroyed: For, in as much as the Lord himselfe cannot out the Copiholder, much lesse shall he, that claimes under him do it. Co.l.4.24.b. *Murrel* and *Smiths* case.

Executors shal lose arrerages.

10 If the sonne be Lord and the father Tenant by certaine rent; the rent is arreare, the Tenant dies and the tenancie descends to the sonne; in this case if the sonne also dies, the executors of the sonne shall not have an action of debt for the arrearages incurred in the sonnes life; because the sonne himselfe by no possibility could have such an action; for that the tenure was altogether in the realty, and the Tenant could not be charged in any personal action for those arrearages. Co.l.4.49.a. *Ognels* case.

The like.

11 If A. hath rent service or rent charge in fee, or for life, and the rent is arreare, and after A. grants over the rent to another, and the Tenant attorns; and after A. dies: in this case, the executors of A shall not recover the arrearages by force of the Statute of 32 H. 8. cap. 37. For by the grant, the over arrearages were lost, and were not due to the Testator at the time of his death, and the Statute saith, the executors shall recover them, &c. in as large and ample manner as the said Testator might or ought to have recovered them, &c. Co.ibid.50.b.4 Co.l.5.12.b.1. *Sanders* case.

Waste in a Coale-mine.

12 A. demiseth a lease to B. for yeares, wherein there is a Coale Mine not opened; Here, if B. open the Mine, it is waste; And therefore if after the Mine is open B. assigne his terme to C. and C. taketh the benefit of the Mine, C. also committeth waste, albeit the Mine was open before; for Derivata potestas non potest esse major primitiva. Co.l.5.113.a. *Mallories* case. Co.Inst.pars 1. 321.b.1. M.36,& 37 El. in Co.B. Rot. 420.

Grant of a reversion not good without attornment.

13 If a Lease for life or years be made rendring rent, &c. and after the reversion is granted to B. by fine, and before attornment B. disseiseth or outs the Lessee, and enfeoffes C. the Lessee re-enters, this shall not amount to an attornment in Law, to make privity to C. and so to enable him to distraine for the rent; for he shall not be in better estate than his Feoffor was; it is otherwise, if the Lessee had expressely attorned to the Feoffee. Co.l. 6.68. Sir Moile Finches case. *Owseys* case.

Demise *durante viduitate*.

14 If a Feme seised of lands durante viduitate, make a Lease for yeares, and the Lessee sow the land, and afterwards the Feme, that made the Lease, takes Baron; Here, the Lessee shall not have the graine; for although his estate be determined by the act of a stranger, yet he shall not be in better case, than his Lessor, from whom he derives his interest. Co.5.116.a. *Olands* case.

Tenant in tail cannot demise longer then the estate lasts

15 If Tenant in taile make a Lease for lives according to the Statute of 32 Hen. 8.28. and after die without issue, this Lease being derived out of the estate taile, shall not continue longer than the estate taile (against the opinion in Dyer, 33 Hen. 8. fol. 48.) Co.l.8.34.a. *Pains* case *per Curiam*.

for, Cessante statu primitivo cessat & derivativus.

Co.8.135.b. Sir *John Nedhams* case. 16 The Ordinary hath not power to give authority to another to sell the goods of the dead; because he himselfe hath not any such authority. 9 El. Dyer 255. Co. l. 9. 39. a. Hensfoes case. — Ordinary cannot sell.

Co.9.76.b.2. *Combes* case. 17 A Copiholder may surrender by Attorney; but then that Attorney must pursue the manner and form of the surrender in all points according to the Customs, as the Copiholder himselfe ought to do; as if the surrender ought to be done by the Lord; or by any other thing, or in any other manner, the Attorney ought to observe it accordingly; for his power shall not exceed the power of the Copiholder, that gives him his authority. — A Copihold may be surrendred by attorney.

Co.l.11.87.a.4 The case of Monopolies. 18 In the 11 Report, one reason why the grant of the Monopolie of making Cards to Edward Darcie was adjudged void, was; because he had no skil to make them; and therefore, albeit the grant extended to his Deputies, and that he might appoint Deputies, which might be expert, yet if the Grantee himselfe be inexpert, and so the grant void as to him, he shall not make any Deputy to supply his place; because, Quod per me non possum, nec per alium. — The grant of a Monopoly void.

27 Things are dissolved, as they be contracted. *Unumquodque dissolvitur eo modo, quo colligatum est: Nihil tam conveniens naturali æquitati, unumquodque dissolvi eo ligamine quo ligatum est.*

Bract.l 5.413. Fleta l.2.c.12. Co.Inst.pars 1 54.b.1. & Inst.2.part. W.2.cap.24. 1 Bracton saith, that writs original (both framed and of course) which are extant in the Register, have their first authority by act of Parliament, and therefore without an act of Parliament they cannot be altered or changed, which is proved by Westm. 2. cap. 24. whereby remedie is provided in many cases. Bractons words are these, Sunt quædam brevia formata in suis casibus; & quædam de cursu, quæ concilio totius regni sunt approbata, quæ quidem mutari non possunt, absque consimili voluntate, &c. Co. l. 8 48. a. John Webbes case. — Writs not changed without Act of Parliament.

Co.Inst.pars 1 131.a.4. Ibid. See more authorities. 2 If after a Protection is allowed by Innotescimus, the Defendant tarry in the Countrey without going to the service, for which he was retained, above a convenient time after he had the Protection, or otherwise repaire from the same service, upon information thereof to the Lord Chancellor, he shall repeale the Protection in that case by another Innotescimus, but a Protection shall not be avoided by a bare averment of the party in that case; because the record of the Protection must be avoided by matter of as high nature. — A Protection must be disallowed by the Chancellor.

Co.Inst.pars 1 204.a.4. 3 E.6. Dyer 65,66. 4 Mar.138. 3 If a man maketh a testment in fee or for life ad faciendum or faciendo, or ea intentione, or ad effectum, or ad propositum, that the Feoffee shall do, or shall not do such an act, none of these words make the estate of the land conditional; for in strictness of Law they are no words of Condition to make an estate of inheritance or Freehold defeasible, which took effect by Livery (except it be in the Kings case, or in the case of a will:) But if a Lease for yeares be made with such a clause, or thus, Quod non licebat, to the Lessee, dare, vendere, vel concedere statum & sub pœna forisfacturæ, this amounts to make the Lease for yeares defeasible, and so was it adjudged in Queen Elizabeths time in the Court of Co. Pl. and the reason of the Court was, That a Lease for yeares was but a contract, which may begin by words, and may also by words be dissolved. — What words make a condition, and what not.

H.40. *Elizabeth Brown & Ayers* case. Plowd.Co.142 *Browning* and *Bestons* case. Co.ibid 214.b 3.1.ibid. *per auth.* 4 If a man make a gift in tailor, a Lease for life upon Condition, that if the Donee or Lessee goeth not to Rome before such a day the Gift or Lease shall cease or be void, the Grantee of the reversion shall never — Where an estate shall cease upon condition, & where not.

never take advantage of this Condition, because the estate cannot cease before an entry; but if the Lease had been but for yeares; there the Grantee might have taken advantage of the like Condition; because the Lease for yeares ipso facto by the breach of the Condition without any entry was void; for a Lease for yeares may begin without Ceremony, and so may end without Ceremony; but an estate of Freehold can neither begin nor end without Ceremony. Co. l. 3. 64. b. 4. and 65. a. 1. Pennants case.

ng that
grant not
ndred
out deed.

5 Rents, Advowsons, Conditions, Reversions, Remainders, and all other things, that lie in grant, as they cannot be granted without Deed, so shall they not be surrendred without Deed. Co. ibid. 338. a. 3.

6 An Obligation or other matter in writing cannot be discharged by an agreement by word. Finch 11. Doct. and Stud. li. 1. cap. 12. Vide infrà 25. 19 E. 4. 1. b.

nuity by
scription.

7 In an Annuity growing by prescription rien arrere is a good plea; for this prescription is a matter in fait: but in an Annuity by Deed it is no good plea, without shewing an Acquittance. 5 H. 7. 33. Finch 12. 4 H. 7. 9. b.

ner plead-
gainst the
g.

8 When a man avoides the Kings Title by as high a matter of Record as the King claimeth, he may have it by way of Plea, without being driven to his Petition, though the King be intitled by double matter of Record; As one is attainted of Treason by Parliament, and an office finds his lands, whereby the King seiseth them, the party may alleadge restitution by Parliament, and a repeale of the former Act. Fitch 12. Co. l. 4. 57. a. 4. In the Sadlers of Londons Case.

wer of re-
ocation an-
lled by feof-
ent or re-
ase.

7 A. by Indenture enfeoffs B. of two acres to the use of A. for life, remainder in taile to C. remainder to D. in fee, with proviso, that if E. die without issue, A. by Indenture sealed, &c. in the presence of 4 witnesses may alter the uses, &c. A. of one acre enfeoffes F. and for the other acre A. by Indenture renounceth, surrenders, releaseth, &c. unto B. C. and D. the said Power, Condition, Authority, &c. E. dies without issue, A. by Indenture revokes the first uses, and limits new ones: And it was resolved, that A. had by the said feofment and release barred himselfe of limiting other uses; for as the Proviso and Consent aforesaid did commence by Deed, so by Deed may they be annulled and defeated, because in all cases when any thing executory is created by a Deed, the same thing by consent of all persons, which were parties to the creation of it, may be againe by their Deed annulled; And therefore Warranties, Recognisances, Rent-charge, Annuities, Covenants, Leases for yeares, uses at the Common Law, and the like, may by a Deed of Defeasance (with the mutual consent of all those that were parties to the creation of them) be annulled discharged and defeated; for it would be strange and unreasonable, that a thing, which is created by the act of the parties, shall not be againe by their act with their mutual consent dissolved. Co. l. 1. 113. a. *Albanies* case.

Blood no va-
luable consi-
deration a-
gainst the Sta-
ute of 13 El. 5.

10 Nature and blood are not valuable considerations to satisfie the Statute of 13 El. 5. and therefore if he that is indebted to five several persons (to each of them in 20 l.) in consideration of natural affection gives all his goods to his sonne or sonne, in this case in as much as the other shall lose their due debts, &c. which are things of value, the intention of the act was, that the consideration in such case should be valuable; for equity requires, that such a gift, which shall defeat others of their due debts, shall be upon as high and as good a consideration, as those debts are, which are so to be defeated. Co. l. 3. 81. a. 4. *Twines* case.

A right cannot
be transferred.

11 By the Rule of the Common Law, a right or title, which any hath to any Lands or Tenements of inheritance or Frank-tenement, Co. l. 4. 1. a. *Vernons* case.

ment, cannot be barred by acceptance of any manner of collaterall satisfaction or recompence, As if A. diſſeiſe B. Tenant for life or in fee of the Mannor of Dale, and after gives the Mannor of Sale to B. and his heirs in full ſatisfaction of all his right in the Mannor of Dale, which B. accepts, yet B. may nevertheleſſe enter into the Mannor of Dale, or recover it in any real action; for the right of Inheritance or Frank-tenement which is ſuppoſed originally to commence by Livery, ſhall not be tranſferred or be extinct without ſome Ceremony, as firſt by re-entry upon the Diſſeiſor, and then by giving Livery, or by that, which doth tant amount, viz. by releaſe or confirmation to him, &c. And therefore it is commonly ſaid in our Books, that accord with ſatisfaction, is a good Plea in perſonal Actions, where Damages onely are to be recovered, but not in Real Actions.

13 H.7.13.20.

Co.l.4.55.b. & 56.a. In the Caſe of the Sadlers in *London*. 29 Aſſ.31. *Pierce Partifields* caſe.

12 In Pierce Partifields caſe cited in the caſe of the Sadlers of London in the 4 Report, fol. 55.b. it was found by office by force of a Diem clauſit extremum after the death of one that held houſes of the King in London, that the Tenant died without heir, whereupon the King grants them to Pierce P. for life, who ſueth a Writ to the Major, to put him into poſſeſſion; the Major returnes, that the Tenant made his Will and gave them to his wife for her life, who was yet in life, and ſeiſed of the ſaid houſes together with one Jo. Digle her then husband, P. P. outs Digle and his wife, who thereupon bring a Scire facias againſt P. P. who demands Judgement of the Writ; becauſe in as much as he was but Tenant for life, and the reverſion was in the King, they ought to ſue the King, which they could not do but by petition: And it was adjudged by all the Juſtices aſſembled in the Chancery that the Writ ſhould abate, and that Digle and his wife ſhould ſue by petition; becauſe, for as much as the Kings Title was found by inqueſt of office upon oath, the Title of the Subject ought alſo to appear by Record of as high nature, viz. by like inqueſt of office upon oath, and not by return of the Major onely; for albeit that return be matter of Record, yet is it not of ſo high and great regard in the Common Law as an office found by oath.

An office for the King cannot be quaſht but by petition, matter of record of as high nature.

Co.l.4.55.a The Caſe of the Sadlers in *London*.

13 At the Common Law, when the King was ſeiſed of any eſtate of Inheritance or Frank-tenement by any matter of Record, were his Title by matter of Record judicial, as attainder, &c. or miniſterial, as office, or by conveyance of Record by aſſent, as fine, Deed inrolled, &c. or by matter in fact and found by office of Record upon oath, as alienation in Mortmaine, purchaſe by Alienee, the Kings villein, eſcheat by death without heire, &c. he that had right could not have any traverſe, whereupon he might alſo have an Amoveas manum, but was alwayes put to his petition of right to be reſtored to his Frank-tenement and Inheritance; Howbeit he might have his Monſtrance de droit, and was not forced to his petition, when the King was intitled by matter in fact (as Villein, Mortmaine, Eſcheat, Alien, &c.) found by office, and by the ſame office the Title of the party did alſo appeare, as if a Diſſeiſor did alien in Mortmain, or to an Alienee, or to the Kings Villeine, or did die without heire, in all theſe caſes the party grieved might have his Monſtrance de droit at the Common Law; And ſo are the Books to be underſtood in 9 E. 3.51. 13 E. 4. 8.a. 4 E. 4. 21. The like.

33 E.3. title *Travers* 36. Co. bid.

14 It was found by office that T. by the Kings Licence married the Kings Niece, and that certaine Lands deſcended to the ſame Niece, which the Baron had alienes without the Kings leave (his wife being the Kings Niece) to another, and for that cauſe the land was ſeiſed, whereupon the Alienee comes into the Chancery, and The like,

sheweth all the case as it was found by office; And therefore because all the truth of the case (viz. the Niece maried by his Licence, the descent to the Niece after the Coverture, &c.) did appeare in the Office, it was awarded, that the Baron for that cause should hold by the Curtesie, and that the Feme by his alienation should be put to her Action and thereupon by award the Alienée had restitution.

The like.

15 It was found by Office that I. held of the King, and that M. his daughter and heire was of full age and had Livery; and by another Office it was also found that the same I. had another daughter K. which was yet within age, whereupon a Scire facias went out against M. and her husband, &c. who said that the land was given to I. and to his first wife the Mother of M. in taile, and that K. was his issue of another wife, and so M. sole heire; but by award of all the Judges, all the land was seised into the Kings hand, because the entaile was not found by any Office, but only that M. was generall heire. 30 Ass. Pl. 28. Co. ibid. 56. a.

A Noble woman by marriage made ignoble.

16 If a Woman be noble (as Dutchesse, Countesse, Baronesse, &c.) by descent, although she marie under the degree of Nobility, yet her birthright remaines; For that is annexed to her blood, and is Character inde lebilis: But if a Woman attaine Nobility by mariage (viz. of a Duke, Earle, Baron, &c.) and after the death of her first husband take another under the degree of Nobility, by this last mariage with one, that is ignoble, she hath lost the dignity, unto which she attained by her first marying one of the Nobility; for, eodem modo quo quicquid constituitur, dissolvitur, And Quando mulier nobilis nupserit ignobili, desinit esse nobilis. Co. l. 4. 118. b 4 *Actons* case. Co. l. 6. 53. b. 7. The Countess of *Rutlands* Case.

Ecclesiastical Law founded by the Common Law.

17 If it be demanded, what Canons, Constitutions, Ordinances, and Synodals provincial are still in force within this Realme, the answer is, that it is resolved and enacted by authority of Parliament, That such of them as have been allowed by generall consent and custome within the Realme, and are not contrariant or repugnant to the Lawes, Statutes and Customes of the Realme, nor to the damage or hurt of the Kings Prerogative Royal, are still in force within this Realme, as the Kings Ecclesiastical Lawes of the same; Now therefore as consent and custome hath allowed those Canons, &c. So no doubt by the generall consent of the whole Realme, any of the same may be corrected, inlarged, explained, or abrogated. Co. l. 5. Part 1. 32. b. The case of the Kings Ecclesiastical Law.

Writing annulled by writing.

18 Although Indentures being made for the declaring of the uses of a subsequent Fine, Recovery or other assurance to certaine persons, and within a certaine time, and to certaine uses, are but directory, and do not bind the estate or interest of the land, yet if the Fine, Recovery, or other assurance be pursued, according to the Indentures, no naked averment shall be taken against those Indentures, viz. that after the making of the Indentures and before the assurance, it was concluded and agreed by mutual consent of the parties, that the assurance should be to other uses: But if any other agreement or limitation of uses be made by writing, or by any other matter as high or higher; then shall the last agreement stand; for every contract or agreement ought to be dissolved by matter of as high nature, as that by which such agreement was contracted; because Nihil tam conveniens, &c. Co. l. 5. 26. a. The Earle of *Rutlands* case.

Outlawry reversed by error upon an Indictment.

19 One Eaton was indicted in B. R. for the death of a man, whereupon an exigent was awarded into the County of Lincolne, Eaton dies, and was never convict or attainted; yet his executors being a writ of Error to reverse the award of the exigent; For in as much as *Eatons* case. 18 H. 7. Co. l. 5. 111. a. *Foxleyes* case.

as the King was entitled by matter of Record, it ought to be avoided by matter of as high nature.

Co.l.7.43. *Kerns* caſe. 20 If two claim as heirs to one man of one and the ſame Land, holden of the King, and one is found by office, the other cannot traverſe that office, without firſt finding another office, which finds him heire alſo. No traverſe without office.

Co.l.8.25.b.4. The Princes caſe. 21 The Charter of E. 3. (Anno 11 Regni ſui) by which lands were annexed to the Duchy of Cornwal, being paſt by the conſent of the Lords and Commons in Parliament, retained the force of an Act of Parliament, and therefore thoſe lands cannot be diſannexed but by Act of Parliament. The Duchy of *Cornwal.*

Co l.9.79.a.b. 12.H.4.23. 9 H.7.14. 4 H.8. Dyer, 1.&c. *Henry Pecoes* caſe. 22 If a man be bound in a Statute to do any collaterall Act, as to make a feoffment, to render a true accompt, or the like; here accord with execution by money or any other thing, is not ſatisfaction to ſave the forfeiture of the Condition; for the contract being made by writing to performe ſuch a collateral Act, it cannot in that caſe be altered without writing: But if a man by contract or Aſſumpſit (without Deed) be to deliver a horſe, or to build an houſe, or to do any other collaterall thing; there money may be paid by accord in ſatisfaction of ſuch Contract; for as a Contract upon conſideration may begin by parol, ſo by accord by parol for any valuable conſideration it may be diſſolved. Writing diſcharged by writing.

Co.l.10.86.b.4 *Leonard Lowis* caſe. 23 Uſes and Powers in contingencie and poſſibility may be by mutual aſſent of the parties revoked and determined; for, as they may be raiſed by Indenture, ſo by proviſo or limitation annexed unto them in the ſame Indenture, they may be extinguiſhed and deſtroyed, either before or after their being. Uſes and powers revoked, &c.

Co.Inſt.pars 1 115.a.3. 24 Albeit a man cannot preſcribe or alledge a Cuſtome againſt a Statute, becauſe it is matter of Record being (indeed) the higheſt proofe and matter of Record in Law; yet a man may preſcribe againſt an Act of Parliament, when his Preſcription or Cuſtome is ſaved or preſerved by another Act of Parliament, &c. A preſcription ſaved.

Dyer 25.b.160 28 H.8. 25 A man is bound by Indenture to pay a ſumme of money, and in an action of debt upon that Deed the Defendant ſaith he hath paid the ſumme, but sheweth no acquittance; In this caſe, the plea is not good, for this Indenture is like a ſimple Obligation, where payment is no plea without an acquittance; It is otherwiſe where the Obligation hath a Condition, per Mountagu. Vide ſupra. 6. Payment no plea without an acquittance

Co.Inſt.pars 1. 131.a.4. 26 By the Statute of 13 R. 2. 16. If after a protection is allowed by Innoteſcimus, the party ſtay in the Country without going to the Service, for which he was retained; above a convenient time after he hath ſuch protection, or repaire from the ſaid Service, upon information thereof to the Lord Chancellor, he ſhall repeal ſuch protection by another Innoteſcimus; Howbeit ſuch a protection ſhall not be avoided by a bare averment of the party in that caſe, becauſe the Record of the protection muſt be avoided by a matter of as high a nature. Protection.

28 Things grounded upon an evil void beginning, cannot have good perfection.

Co.Inſt.pars 1 19 a.4. 30 E.1. *Form.65.* Temps, E.1. 1 Before the Statute of Weſt. 2. cap. 1. Alienation by the Donee in tatle after iſſue had did barre the Donor of his reverſion: but if he had aliened before iſſue had, and had after had iſſue, although that alienation would have barred the iſſue, becauſe he claimed a Fee ſimple, yet Alienation by tenant in tail before iſſue, no barre to the donor.

in

Dower of a reversion *ex assensu patris*, not good.

in that case if the issue had died without issue, the Donor might re-enter, for that he alienes before any issue, at what time he had no power to alien to barre the possibility of the Donor. Ibid 82.19. E.2. Form.61. Plowd.246. Co.7.35. *Nevils* case.

2 Tenant for life of a Carve of land, the reversion to the father in fee, the sonne and heire apparent of the father endoweth his wife of this Carve; by the assent of the father; the Tenant for life dieth, the husband dieth; here, the reversion was a tenement in the father, and yet this is no good endowment ex assensu patris; because the father at the time of the assent, had but a reversion expectant upon a Freehold, whereof he could not have endowed his own wife; and albeit the Tenant for life died, living the husband, yet quod initio non valet, tractu temporis non convalescet. Co.Inst.pars 1 35.a.3.

Simony makes the Presentation, &c. void.

3 A Villein at this day purchaseth an Advowson in fee, the Church becomes void, the Lord for 100 l. given by A.B. Clerke presents him to the Church, and his Clerke is admitted, instituted, and inducted, yet this gaineth not the Advowson to the Lord: for by the Statute of 31 El. cap. 6. the presentation, admission, institution, and induction in that case are made void, and not onely voidable, as they were before the Statute: And so it is also if any other on the behalfe of A.B. had given or contracted with the Lord in consideration of any valuable thing to present A.B. to the said Church, albeit it has been without the consent or knowledge of A.B. yet it should not have vested the Advowson in the Lord, causa qua supra. Co.ibid.120. a.2.

Dereignment purgeth profession.

4 If the wife, after the husband hath entred into Religion, alien, the lands, which is her own right, and after her husband is dereigned, the husband may enter and avoid the alienation. Co.ibid.132. b.1.

Mariage of Priests.

5 In times past if a secular Priest had taken a wife, and had issue and died, that issue had been lawfull and should have inherited as heire to his father; &c. For, (as it was then holden) the mariage was not void, but voidable by Divorce; and after the death of either party no Divorce could have been had: But in those dayes if a man had married a Nunne, or a Monke had married, those mariages were holden void; the Nunne and the Monke being (as Littleton saith Sect 202.) dead persons in Law, and therefore their issue could not have inherited. 21 H.7. 39. 19 H.7. Bastardie 33. 5 E.2. Nonability 26. 47 E.3. casu ultimo. Co.ibid.136. a.3.

Rescous lawfull.

6 If the Lord destrain the Tenant for rent before it be due, the Tenant may justifie to make rescous, and it shall not be adjudged disseisin of the rent; So it is also of a rent charge. Co.ibid.160. b.3.v.ibid. Pl.author.

Livery of seisin *in futuro*, void.

7 If a Lease for yeares be made to begin at Michaelmas, the remainder over to another in fee, if the Lessor make Livery of seisin before Michaelmas, the Livery is void; because Livery of seisin must passe a present Free-hold, and not *in futuro*; for if it should worke at all, it must take effect presently, and cannot expect. Co.ibid.117. a.4.

Release to lessee for years void.

8 If a man let to another his land for terme of yeares, if the Lessor release unto the Lessee all his right, &c. before the Lessee enter into the same land by force of that Lease, such a release is void; because the Lessee had not possession in the land (but onely; interesse termini) at the time of the release made: It is otherwise, if the Tenant had been in possession, or in case of a Lease for life. Co.ibid.270. Littl. § 459.

Patron shall not charge the Glebe.

9 Regularly, the Incumbent may charge the Glebe, if the Patron and Ordinary joyn with him in the grant, or consent thereunto either by Precedent Licence, or subsequent confirmation: yet in this case, if the Patron be but Tenant in tail or for life, or the Ordinary be Patron, the charge shall not be perpetual; for in the first case the issue in taile, reversioner, or remainder shall avoid it, and in the other case, the Licence or Confirmation of the Ordinary is not available to Co.ibid 300. b.3. Littl. § 528.

charge the land without the conſent of the Dean and Chapter: but ſhall be avoided by the Succeſſor of the Ordinary.

Co. Inſt. pars 1 300 b. 3. 10 A. Parſon of D. is Patron of the Church of S. as belonging to his Church, and preſents B. who by the conſent of A. and of the Ordinary, grants a rent charge out of the Glebe, this is not good to make the rent charge perpetual, without the aſſent of the Patron of A. — A grant of a rent not good.

Co. ibid. 301, a. 1. 11 If the Diſſeiſor make a Charter of Feoffment to A. with a letter of Attorney, and before Livery the Diſſeiſee confirms the eſtate of A. or the Deed made to A. this is clearly void, though Livery be made afterwards. — Confirmation void.

Co. ibid. 323. b. 4. 12 If the Tenant of the Land, out of which a rent charge is iſſuing, pay the rent to a Stranger that hath no right thereunto, and the right owner releaſe to him, this releaſe is good; becauſe he thereby admitteth himſelfe to be out of poſſeſſion: But if the Tenant had given him any thing in name of attornment, and the right owner had releaſed to him, this releaſe had been void; becauſe an Attornement onely, can be no diſſeiſin of the rent; and therefore in that caſe the releaſe had not good footing, nor whereon to worke. — A void releaſe of a rent.

Litt. § 633, 634. Co. ibid. 336. b. 4. 13 If Feme Inheretrix have a Baron under age, who during his nonage aliens the Feme of Land, and dies; In this caſe the Feme may enter: So likewiſe if two Joyntenants under age make feoffment in fee, and one of them dies, the Survivour may enter, &c. — Nonage.

Litt. § 660. Co. ibid. 348. 14 If Tenant in tail make feoffment in fee to the iſſue in tail within age, by force whereof he is ſeiſed, if the Tenant in tail die, the iſſue is remitted; and therefore in this caſe, if the iſſue in taile, being at full age, both in the life of the Tenant in taile, grant a rent charge iſſuing out of the land to a Stranger, and after the Tenant in taile dies, the iſſue in taile ſhall hold the land diſcharged. — Eſtate in tail not chargable.

Co. ibid. 349. a. 3. 15 If the heire apparent of the Diſſeiſee, diſſeiſe the Diſſeiſor, and grant a rent charge, and then the Diſſeiſee dieth, the Grantor ſhall hold it diſcharged; for there a new right of entry deſcendeth unto him, and therefore he is remitted, and ſhall avoid the charge: So likewiſe if the Father diſſeiſeth the Grandfather, and granteth a rent charge and dieth; now is the entry of the Grandfather taken away; and here, if the Grandfather dieth, the Sonne is remitted and ſhall avoid the charge. — A rent charge not good.

Finch 12. 16 If an Infant or Feme covert make their will, and publiſh it, and after die of full age or ſole, yet is the will nothing worth. 10 Eliz. Dyer 344. — A Will void.

Finch ibid. 17 One diſſeiſed of two acres in D. releaſeth all his right in all his lands in D. and delivereth it to a Stranger to be delivered over to the Diſſeiſor as his Deed, ſuch a day; before which day the Diſſeiſor diſſeiſeth him of another acre in D. and then the releaſe is delivered over unto him: yet nothing of the right of this third acre paſſeth by the releaſe. — A void releaſe.

Co. l. 2. 55. *Buckters* caſe. 18 A. Tenant for life makes a Leaſe for 4 yeares to B. to begin preſently, and after makes a Leaſe for life to C. to begin at Midſummer following, and after Midſummer B. attorns; here, the Leaſe for life to C. is void, becauſe an eſtate of Freehold cannot commence in futuro, and then the attornment, though it were after Midſummer, ſhall not make the reverſion to paſſe, the grant thereof in futuro being void at the beginning; for, quod ab initio non valet, tractu temporis non convaleſcet. — A Leaſe for life void.

Co. l. 2. 57. *Beckwiths* caſe 19 A Feme Inheretrix covenants by Indenture without the knowledge — A void fine.

ledge or consent of the Baron to acknowledge a Fine to certain Conisées and uses in the said Indenture mentioned, and afterwards the Baron covenants also by Indenture without the knowledge of the Feme to acknowledge a Fine to other Conisées and uses in that Indenture also mentioned, and afterwards the Baron and Feme, joyne in a fine to the Conisées in the Indenture of the Feme mentioned; Here, the Limitations and Declarations of Uses in both the Indentures are void, and the said Fine was by construction of Law to the use of the Feme and her heires, as if no use at all had been declared, for, the Feme alone, albeit she be owner of the land, yet being sub potestate viri; cannot in respect of her Coverture without her Baron, limit the use, and on the other side, the Baron, who hath not any estate in his own right, cannot against the good liking of the Feme limit any use; because he is not owner of the land; so that the one is not sui juris and hath the estate; and the other is sui juris, and hath not the estate; And therefore when they differ in limitation, all they do must needes be void.

Avoid deed, or contract.

20 When a Deed hath two deliveries, if the person at the first delivery had power and ability in Law to contract, but could not perfect it, untill an impediment should be removed, before the second delivery; in that case, the contract is good; as if the Disseisée make an Indenture purporting a Lease for yeares, and deliver it to a stranger out of the land as a scroul, and command him to enter into the land, and to deliver it upon the land as his Deed to the Lessée, which is done accordingly, this is a good Lease: But if the person at the first delivery had not power or ability in Law to make the Lease or Contract, and before the second delivery he attains, to such power, there the Lease or contract is not good; as if at the time of the first delivery the Lessor be an Infant or Feme covert, and at the time of the second delivery they become of full age or sole, in both these cases the Deed doth not bind; because at the time of the first delivery they were not persons that had ability in Law to make a Contract. Co. l. 3. 35. b. *Jennings* and *Brags* case, in *Butler* and *Bakers* case.

Avoid joynture

21 If the Baron make feofment in fée to the use of himselfe for life, and after to the use of B. for his life, and after to the use of the Feme for life, for her Joynture, that is not within the Statute of 27 H. 8. cap. 10. to barre the Feme of her Dower, albeit B. die, living the Baron: So also if the estate be made to A. for life, and after to the Feme for her Joynture, neither is that within the Act, although A. die before the Baron; for in these and the like cases; in as much as at the time of the limitation of the estates they were out of the Act, (for that it was not then certaine, that the estate of the Feme should take effect immediately after the death of the Baron, as it ought to do by the said Act) no subsequent event can make them within the Act; For, Quod ab initio non valet, tractu temporis non convalescet; & quæ malo sunt inchoata principio, vix est ut bono peraguntur exitu. Co. l. 4. 2. b. 1. *Vernons* case.

A failer of Action.

22 A. seised of the Mannor of D. in fée had communication with B. of demising the said Mannor unto him, C. gives it out, that he had a Lease for 90 yeares in the Mannor, whereupon B. desists from taking the Mannor by demise, and thereupon A. brings an action of slander against C. And it was adjudged that those words would not beare it. And in this case, though it appeared by the Defendants barre, that he had no title or interest in any such Lease, yet because the matter alleadged in the Count did not maintaine the Action, the barre could not make it good. Co. l. 4. 18. Sir *Gilbert Gerrards* case.

Agrant of tithes not good by misnamer of the tenant.

23 M. Eliz. by Letters patents grants to I. S. Totam illam portionem decimarum & garbarum suarum in L. in Com. N. cum omnibus aliis decimis suis quibuscunque in L. in dicto Com. N. tunc vel nuper in occupatione Co. l. 4. 35. 4. *Bozouns* case.

I. C. and grants further that those Letters Patents shall be of force and effect against her selfe any her Successors, Non obstante male nominando. vel male recitando prædict. portionem decimarum, &c. Et non obstante aliquibus defectis in male recitando vel non nominando alicujus tenentis sive occupatoris, &c. And all this was found by special verdict, and besides, that I. C. never had any Tithes in L. in his occupation; and thereupon one question was, whether the defect of mistaking the Farmer was not supplyed by the non obstante; and it was resolved, that it was not; Because when the words of the grant are not sufficient ex vi termini to passe the thing granted, but the grant is utterly void, there a non obstante cannot make the grant good; for when the Queen grants Totam illam portionem, &c. super in tenura I. C. here the addition of I. C. is of the substance of the grant, and in as much as I. C. never had the portion in his occupation, the grant must needs be void ex vi termini, and therefore the non obstante, cannot make it good.

Co. l. 4. 62. b. 4. *Herlakendens* Case. 24 If I let my land for life, and after give the trees, and after the Lessee dies, yet the Donee cannot take them; because at the time of the grant, the Lessee had the property in them, as annext to the land, 21 H. 6. 46. d. per totam Curiam. — A void grant of trees.

Co. l. 4. 90. a. 3. *Druries* case. Stat. 21. H. 8. 13 25 If a Countesse (that by the Statute may retaine two Chaplains capable of dispensations to enjoy two benefices) doth first retaine two, and after a third, the two first are onely capable of dispensations; for they onely are her Chaplains according to the Statute, and the other at the Common Law; And therefore in this case, if the two first die, yet is not the other capable of a dispensation; because at the time of his retainer he was not capable; for he ought to be newly retained again to make him capable thereof: So likewise if the Son and heir apparent of a Baron retain a Chaplain, and give unto him his Letters under his hand and seal, and after his father dies, and this Chaplain purchaseth a dispensation, this retainer and those Letters will do him no good; because they were not available at the first to make him capable, Et quod ab initio non valet, tractu temporis non convalescet. — Retainer of a Chaplain void.

Co. l. 4. 107. b. 3. *Adams* and *Lamberts* case. H. 6. & 7. E. 6. Dyer 81. 26 Pope Urbane at the request of Ralph Baron of Greystock, founded a College of a Master and six Priests to be resident at Greystock, and assignes to each of the Priests five marks per annum, besides their bed and chamber, and to the Master 40 l. per annum; And upon the Statute of 1 E. 6. 14. it was certified in the Book of First-fruits and and Tenths, Rectoriam & Collegium de Greystock: But it was resolved by all the Justices, that this reputative College was not given to the King by the said Act, because it had no lawfull beginning, nor so much as the countenance of a lawfull beginning; for the Pope cannot found or incorporate a College within this Realme, nor assigne or give Licence to assigne any temporal livings unto it; but it ought to be done by the King himselfe, and by no other. — A void foundation of a College.

Co. l. 5. 42. *Codwels* case. 27 In appeal of Mayhem betwixt John Codwel Plaintife, and Thomas Parker Defendant, the parties descend to issue, and the Jury finds for the Plaintife, and now it was moved in arrest of Judgement, that there was variance betwixt the Panel of the Venire facias and the Distringas, and Postea, in the name of one of the Jury, that appeared and gave the verdict; for, in the Panel of the Venire facias, he was named Palus Cheale, And in the Distringas and in the Postea it was Paulus Cheale: And because the name of a Juror in the Venire facias was mistaken, the Judgement was arrested: But if he had been well named in the Panel upon the Venire, and misnamed in the Distringas or Postea, upon examination it might have been amended — A void Panel.

mended; because the Venire facias, and Panel are the beginning and ground of the other subsequent Processe.

A void Presentation.

28 D. was seised of a Mannor, unto which an Advowson was appendant, and dies, the Mannor descends to E. an Infant, the Church becomes void; A. presents during the nonage of E. who at full age enfeoffes F. of the Mannor, and after the Church becomes void againe, and F. presents, whereupon the Assignée of A. brings a Quare impedit; And it was adjudged, that by the feofment of E. when he had attained his full age, the Mannor passed to the Feoffée, but not the Advowson; because by the usurpation, the Infant was out of possession of the Advowson, and he had but a right in it, the usurpation being onely voidable by action, which could not be transferred to a stranger; And therefore, the Advowson being not at all granted to F. he shall not gaine it afterwards by an usurpation. Co. l. 6. fo. 2. a. 4. *Boswels* case. 16 E. 3. Tit. *Quare impedit* 67. *Adams* case.

A void grant of the Office of the Auditors of the Court of Wards.

29 Queen Eliz. in the 31 yeare of her Raigne grants unto Walter Tooke and William Curle Officium unius Auditorum Curiæ suæ Wardorum, &c. habend. dictis Waltero & Willielmo & alteri eorum conjunctim & divisim pro termino vitarum suarum & eorum alterius diutiùs viventis, &c. And afterwards King James in the 4 yeare of his Reign during the lives of the said Walter Tooke and William Curle, grants the Reversion of the said Office to John Church-hill and John Tooke: And in this case King James his grant was adjudged void; because that Office being partly judicial, and partly ministerial, could not in respect of the Judicial part be granted in Reversion; for which the Rule is, officia judicialia non concedantur, antequam vacent; And therefore being void at first, it shall not be made good afterward; for albeit William Curle one of the first Grantees, and John Church-hill one of the last Grantees happen to die, yet shall not John Tooke enjoy the Office by vertue of King James his grant; because, quod ab initio non valet, &c. Co. l. 11. 4. a. 4. Auditor *Curles* Case.

A void grant of a Surveyorship.

30 John Bishop of Sarum grants the office of Surveyour of the Mannor of Sherborne unto Edward Green and John Green for their lives together with the fee of 6. l. 13. s. 4. d. per annum, whereas the office formerly used to be granted onely to one; Edward Green dies, as also the Bishop, the fee is behind, and John Green distreins for it, but could not maintain the Avowry, because the grant was void by the Statute of 1 Eliz. not printed, (which restraineth Ecclesiastical persons from making unusual grants, &c.) and in this case, albeit Edward Green being dead, and John Green alone had the office, when he distrained, yet the grant being void at first, shall not be made good by any subsequent Act, that happens after, to bind the Successor to perform it. Quia quæ malo sunt inchoata principio, vix est ut bono peragente exitu, & quod initio non valet, &c. Co. l. 10. 61. b. 4. The Bishop of *Sarums* case.

A void grant to a Colledge.

31 A Grant by the Master and Fellowes of a Colledge to Queen Eliz. contrary to the Statute of 13 El. 10. being thereby made void, could not afterwards be made good by the Statute of 18 El. 2. (for Confirmations of Grants made unto her) because that can by no meanes be made good, which was meerly void at the beginning. Neither shall the general words of 18 El. enable any person to make any conveyance, which by the Common Law was disabled, as if an Infant had conveyed land to the Queen by Deed inrolled, or had levied a Fine to her before the Statute of 18 El. and then that Act had been made; yet the estates granted had not been confirmed by that Act; because the Infant during his minority was absolutely disabled to make such a Grant; and therefore notwithstanding that Statute, he might have reversed the Fine by a Writ of Error, as it was adjudged M. 32 and 33 Eliz. in B. R. by Wray and all the Court, in Vaughans case. So likewise if a man seised of land in fee, had granted the land after his death Co. l. 11. 77. a. 4. *Magdalen* Colledge case.

Co.l.11.78.a.3 The ſame caſe

death, to the Queen her heires and ſucceſſors, the ſaid Statute of Confirmation had not made ſuch a grant good, becauſe it was againſt the Rules of Law. 38 H.6.33. The Abbeſſe of Sions caſe, and the Earle of Leiceſters caſe Plow. 400, &c. Quæ malo ſunt inchoata, &c.

Fitz.35.f.6.

A void preſentment.

32 A preſentment made by a ſtranger to an Advowſon, which is appropriate to an Abbey, is void, be the preſentment in the Abbots time or during the vacation; and albeit the Clerke be afterwards admitted, inſtituted, and inducted, yet that cannot make the preſentment, which was void at firſt, to take effect; For, Quod initio non valet, &c. It is otherwiſe if the Abbot himſelfe preſent, &c.

Co.l.1.15.b.3. Sir *William Pelhams* caſe.

A void recovery, and forfeiture by tenant for life.

33 A tenant for life (remainder in tail, remainder in fée) bargains and ſels the land in fée to B. who after the Statute of 32 H.8. cap. 31. and before the Statute of 14 El. cap. 8. ſuffered a recovery, wherein A. was vouched, and vouched over, &c. and after Judgement was entred and execution ſued upon that recovery; yet was the entry of the tenant in tail adjudged congeable; for albeit the recovery was not had immediately againſt A. yet was it adjudged a forfeiture, within that Statute of 32 H.8. and then the ſuffering of the recovery being a forfeiture, it could not afterwards be ſalved by entring Judgement and ſuing execution thereupon.

Co.Inſt.pars 1. 46.a.4.

A void grant of Glebe.

34 If the Patron grant the next avoydance, and after Parſon, Patron, and Ordinary before the Statute, had made a leaſe of the Glebe for yeares, and after the Parſon dieth, and the grantée of the next avoydance had preſented a Clerk to the Church, who is admitted inſtituted, and inducted, and dieth within the terme, the Patron preſents a new Clerk, who is alſo admitted, inſtituted, and inducted; here albeit, he commeth in under the Patron, that was party to the Leaſe, and was Admitted, Inſtituted, and Inducted; yet becauſe the Leaſe had no good beginning, but was avoided by the Grantees Incumbent, who had the whole eſtate in him, it ſhall not be againe revived; but ſhall be extinct for ever, and ſhall not be maintained againſt the laſt Incumbent.

Co.Inſt.pars 1 31.b.4.

The laſt feme not endowed.

35 If a man be Tenant in generall taile, and take a wife and hath iſſue by her, and ſhe dies, and after he taketh another wife and dies, the laſt wife ſhall be endowed; becauſe ſhe may have iſſue, which by poſſibility may inherit: But in this caſe if the husband during his firſt wives life alien the land in Fee, and takes an eſtate back to him and his wife, and the heires of their two bodies, and the wife dies, the ſecond wife ſhall not be endowed; becauſe during the Coverture (when her Title of Dower ſhould take beginning) he was ſeiſed of an eſtate taile ſpecial; and yet here alſo the Iſſue, that he may have by the laſt wife, is inheritable.

Co.ibid.9.a.1.

Grant to children before birth, not good.

36 B. having divers ſonnes and daughters, A. giveth lands to B. & liberis ſuis, and to their heires, the Father and all his Children do take a Fee ſimple joyntly by force of theſe words, their heires; but if he had no child at the time of the Feofment, the Child or Children, born afterwards ſhall not take.

Dyer,58.a.4. 35 H.8.

Ceſtuy que uſe

37 Ceſtuy que uſe (after the Statute of 1 R.3. 1. and before the Statute of Uſes) makes a Leaſe for yeares, and after during the terme makes Feofment of the land, and gives Livery, &c. In ſuch caſe, nothing paſſed by ſuch Feofment, becauſe he had nothing in Uſe or Poſſeſſion, and then the Statute of R.3. would not aide him.

29 Quod non habet principium, non habet finem.

Where there can be no preſentment by lapſe.

1 If the Biſhop be named in the Quare impedit, he ſhall never afterwards preſent by lapſe, and then ſhall neither the Metropolitan, nor after him the King do it; For the Biſhops preſentment failing, which was to be the firſt ſtep and beginning, their power of preſenting, which ſhould ſucceſſively follow his, muſt needs alſo fail; according to the Rule, Quod non habet principium, non habet finem. Co.Inſt. pars 1 344.b.4.

Right without action no remitter, & contra.

2 Regularly, a man ſhall not be remitted to a Right remedileſſe, for the which he can have no action; And therefore Littleton ſaith (Sect. 661.) that the principal cauſe of a Remitter is, when the iſſue hath no perſon (but himſelfe) againſt whom he may bring his Action, by which it appeareth, that he ought to have juſt cauſe of Action; for neither an Action without a Right, nor a Right without an Action can make a Remitter; as if Tenant in tail ſuffer a Common Recovery, in which there is error, and after the Tenant in tail diſſeiſeth the Recoveror, and dieth; here the iſſue in tail hath an action, viz. a Writ of Error; but ſo long as the Recovery remaineth in force, he hath no Right, and therefore in that caſe cannot be remitted. Co.ibid.349.a. 4.

Idem.

3 If B. purchaſe an Advowſon, and ſuffereth an uſurpation and ſir Months to paſſe, and the uſurper granteth the Advowſon to B. and his heires; B. dieth, his heire is not remitted; becauſe his Right to the Advowſon was remedileſſe, viz. a Right without an Action. Co.ibid.349. b.3.

4 Vide infra M. 38. 1. 7. and 162. 49. Co.Inſt.pars 1 31.a.4.

30 *He that claimeth Paramount a thing, ſhall never take benefit, nor hurt by it.*

Dos de dote peti non poteſt.

1 If there be Grandfather, Father, and Son, and the Grandfather is ſeiſed of three acres of land in fee, and taketh wife, and dieth, this land deſcendeth to the Father, who dieth either before or after entry; now is the wife of the Father powable, yet ſhall ſhe have the thirds but of two acres onely, and the wife of the Grandfather ſhall have for her Dower the other acre intirely; becauſe the Dower of the Grandmother is Paramount the Title of the Fathers wife, and the ſeiſin of the Father, which deſcended to him (be it in Law or actual) is deſeated: and now upon the matter the Father had but a Reverſion expectant upon a Freehold; and in that caſe Dos de dote peti non poteſt, although the Grandmother die, living the Fathers wife. Co.Inſt.pars 1 32.a.4.

Dower according to the improved value.

2 If the wife be entitled to have Dower of three acres of March, every one of the value of twelve pence per annum, the heire by his induſtry and charge maketh it good meadow, viz. every acre worth ten ſhillings per annum, the wife ſhall have her Dower according to the improved value, and not according to the value, as it was in her husbands time: So it is likewiſe if the heire improve the value by building; the like Law is, if the value be impaired in the time of the heire; for then alſo ſhe ſhall be endowed according to the value at the time of the aſſignement, and not according to the value as it was in her husbands time: And the reaſon of all this is, becauſe ſhe claims paramount the improvement or impairing of it, and hath Title to the quantity of the land, viz. one juſt third part. Co.Inſt.pars 1 32.a.3.

3 If

Co. Inſt. pars 1 46.a.3.

3 If Tenant in taile make a Leaſe for yeares reſerving xx s. rent, and after take a wife and die without iſſue; here as to him in the reverſion, the Leaſe is meerly void, becauſe he claimes paramount the Leaſe: but if he endow the wife of Tenant in tail of the land (as ſhe may be though the eſtate taile be determined) now is the Leaſe as to the Tenant in Dower (who is in, of the eſtate of her husband) revived againe, as againſt her; for, as to her, the eſtate taile continueth, and the Leaſe is paramount her Title. Leaſe by tenant in tail good in dower.

Co. Inſt. pars 1. 113.a.3. Litt. § 169.

4 If a man (by the Cuſtome) deviſe that his executors ſhall ſell his lands, &c. and dieth, the lands in this caſe deſcend to his heire, and the executors have no eſtate in them, but onely a bare and naked power; nevertheleſſe a feoffment from them ſhall amount to an alienation to veſt the land in the Feoffee; becauſe the Feoffee by conſtruction of Law ſhall be ſaid to be in by the Diviſor, and not by the executors: So it is likewiſe, if a man (by the cuſtome) deviſe a reverſion or any other thing, that lyeth in grant to be ſold by his executors, they may ſell the ſame without Deed, cauſa qua ſuprà. Feoffee in by deviſe.

Co. Inſt. pars 1. 117.a.2.

5 If lands be given to a Villain and to the heirs of his bodie, the Lord may enter and put out the villein, and the heirs of his body; for, Quicquid acquiritur ſervo, acquiritur domino: And in this caſe the Lord gains a Fee ſimple determinable upon the dying of the Villain, without iſſue of his bodie and the abſolute Fee ſimple remaineth ſtill in the Donor. And if the Lord enter, and after enfranchiſe the Donee, and after the Donee hath iſſue, yet that iſſue ſhall never have remedie either by Formedon or Entry, to recover this land, by force of the Statute de donis, &c. For the Lord is in paramount the entaile, and that Statute giveth onely remedie to the iſſues of the Donee, that hath capacity and power to take and retaine the gift: And the Title of the Lord remaines as it did at the Common Law; for the Statute reſtraineth acts done onely by the Tenant in taile: So it is alſo if lands be given to an Alien, and to the heires of his body, upon office found the land is ſeiſed for the King, afterwards the King makes the Alien a Denizen, who hath iſſue and dieth, the King ſhall detaine the land againſt the iſſue; becauſe the Kings Title is Paramount the entail, viz. by his prerogative. Vide infrà 72. The Lords title Paramount an entail to a villain, and ſo is the Kings to that of an Alien.

Co. Inſt. pars 1 148.b.3.

6 If a man grant a rent charge out of two acres, and after the Grantee recovereth one of the acres againſt the Grantor by a Title paramount; the whole rent ſhall iſſue out of the other acre. Doct. & Stud. l. 2. cap 17. A Title Paramount to rent.

Co. Inſt. pars 1 148.b.3.

7 If a man enfeoffeth B. of one acre in fee upon Condition, and B. being ſeiſed of another acre in fee, granteth a rent out of both the acres to the Feoffor, who entreth into the one acre for the Condition broken, the whole rent ſhall iſſue out of the other acre; becauſe his Title is paramount the grant. Title Paramount a grant.

Co. Inſt. pars 1. 184.b. Litt. § 286.

8 If two Joynt-tenants be ſeiſed of an eſtate in Fee ſimple, and the one grants a rent charge to another out of his part; here, the rent is good during his life, but after his decaſe the Survivor ſhall avoid it; becauſe he commeth in by the firſt Feoffor, and not under his companion: So likewiſe if a man be poſſeſt of certaine lands for terme of yeares in the right of his wife and granteth a rent charge and dieth, the wife ſhall avoid the charge: And for the ſame reaſon it is, that if a Joynt-tenant charge the land with common of Paſture, Turbary, Eſtovers, or with a Corodie, or with a way over the land, or the like, this ſhall not bind the Survivour; For, jus accreſcendi præfertur oneribus, and Alienatio rei præfertur juri accreſcendi. Vide M. 15. Pl. 14. *Jus accreſcendi præfertur oneribus.*

Co. Inſt. pars 1 185.a.1.

Co. Inſt. pars 1 185.a.2.

9 One Joynt-tenant in fee letteth a Leaſe for yeares of a ſtranger by Simile.

by Deed indented, and dieth, the Survivour shall not be bound by the conclusion; because he claimes above it, and not under it.

Rent charg-eth the Feames land.

10 If there be two Joyn-tenants in fee, and the one maketh a Lease for yeares, reserving a rent and dieth, the surviving Feoffee shall have the reversion, but not the rent; because he claimeth in by the first Feoffor, which is paramount the rent: So it is also of the wife, where the husband being Lessee for yeares, in her right, maketh a Lease of part of the terme, reserving a rent. Inst. part 1. 318. a. 3. Co.Inst.pars 1 185.a.2. Finch 13. Dyer 187.

Smith.

11 If a husband, wife, and a third person purchase lands to them and their heires, and the husband before the Statute of 32 H. 8. cap. 1. had alienen the whole land to a stranger in fee, and dies the wife and the other Joyn-tenant were Joyn-tenants of the right, and if the wife had died, the other Joyn-tenant should have had the whole right by Survivour; for that they might have joyned in a writ of right; and in this case the discontinuance would not have barred the entry of the Survivour because he claimed not under the discontinuance, but by Title paramount above the same, by the first feofment. Co.Inst.pars 1 187.b.4.

A condition paramount a defeat.

12 If a man be seised of lands in Fee [or Fee taile upon Condition to render certaine rent, or any other Condition; albeit such a Tenant die seised], yet if the Condition be broken in his life time or after his decease, that descent shall not take away the entry of the Feoffor or Donor, or of their heirs, because the tenancie was originally charged with the Condition, which is paramount the descent; for the Condition remaines in the same essence that it was in at the time of the creation of it, and the estate of the Tenant is conditional, in whose hands soever the tenancie comes, &c. So it is likewise if such a Tenant upon Condition be disseised, and the Disseisor die thereof seised, and the land descends to the heire of the Disseisor; In this case, albeit the entry of the Tenant upon Condition that was disseised, is taken away; yet if the Condition be broken, then may the Feoffor or Donor, that made the estate upon Condition, or their heires enter, Causa qua suprà; and also for that a Condition cannot be devested, or put out of possession, as Lands and Tenements may. Co.Inst.pars 1 240.a.b. Littl.§ 391, 392.

Dower paramount a defeat.

13 If a Disseisor die seised, and his heire enter, who endoweth the Feme of the Disseisor of the third part of the Tenements, &c. In this case, as to this third part, which is so assigned to the Feme in Dower, presently after the Feme entreth, and hath the possession of the same third part, the Disseisee may lawfully enter upon the possession of the Feme into the same third part; because, albeit the heire entred, yet when the wife is endowed, she shall not be in by the heir, but immediately by her husband, being the Disseisor, for her life, and that, by a Title paramount the dying seised and discent: And therefore in judgement of Law, the discent, as to the Freehold and Possession which the heire had, is taken away by the endowment; for that the Law adjudgeth no mean seisin between the husband and the wife. Co.Inst.pars 1 240.b.4. Littl.§ 393.

Dower paramount, the elder title.

14 A man makes a gift in taile reserving twenty shillings rent, and dies, the Donee takes wife, and dieth without issue, the heire of the Donor entreth and endoweth the wife, Here, the wife is not in by the heir of the Donor, but by title paramount of the estate of her husband; And therefore albeit the estate taile be spent, and the rent reserved thereupon determined, yet after she is endowed, she shall be attendant to the heire, in respect of the said rent. Co.Inst.pars 1 241.a.4.

15 If there be Lord, Peine, and Tenant, and the Peine grant by

Co. Inst. pars 1 321. b. 1. Litt. l. § 583. Co. l. 5. 113. a. *Mallories* case. Temps E. 2. Attorn. 18. 39. H. 6. 38. per *Prisot.*

The Lord Paramount may distrain without attornment.

Fine the Services of his Tenant to another in fee, & after the Grantee dies without heir; here, the Services of the Mesnalty shall escheat to the Lord paramount; and in this case, if the services of the Mesnalty be afterwards behind, the Lord Paramount shall distraine the Tenant, although the Tenant did never attorne, because the Lord Paramount commeth to the Mesnalty by a Seigniory paramount; and therefore there needs no Attornement; As if, there be Lessee for life of a Manner, and he surrenders his estate to the Lessor, there needeth no Attornement of the Tenants, because the Lessor is in by a Title Paramount.

Co. Inst. pars 1 327. b. 4.

Discontinuance of the wives land takes not away the entry of him that hath a title paramount.

16 A Discontinuance made by the husband, did take away the entry onely of the wife and her heires by the Common Law, and not of any other, which claimed by Title Paramount above the Discontinuance; as if lands had been given to the husband and wife, and to a third person and to their heires, and the husband had made a Feoffment in fee, this had been a Discontinuance of the one moity, and a Disseisin of the other moity; And if the husband had died and then the wife had died, the Survivour should have entred into the whole; for he claimed not under the Discontinuance, but by Title Paramount from the first Feoffor; And seeing the right by Law doth survive, the Law doth give him a remedie to take advantage thereof by entry for other remedy for that moity he could not have.

Co. Inst. pars 1. 338. b. 2.

A title paramount avoids rent and charges.

17 If a Bishop be seised of a rent charge in fee, the Tenant of the land enfeoffes the Bishop and his Successors, the Lord enters for the Mortmaine, he shall hold it discharged of the rent; for the entry for the Mortmaine affirmeth the Alienation in Mortmaine, and the Lord claimeth under his estate: But if Tenant for life grant a rent in fee, and after enfeoffe the Grantee, and the Lessor enter for the forfeiture, the rent is revived; because the Lessor doth claime above the Feoffment.

Co. Inst. pars 1 351. a. 3.

Chattels real returns to the feme, if she survived.

18 If a Feme Sole possest of a Lease for yeares takes Baron, who deviseth it by his Will or disposeth not of it at all in his life time, the Feme, if she survive, shall have it againe, because her estate is paramount the interest of the Executor; And there is the same reason of estates by Statute Merchant, Statute Staple, Elegit, Wardships, and other Chattels real in possession: So likewise if the husband charge the Chattel real of his wife, it shall not bind the wife if she survive him, causa qua supra.

7 H. 6. 2.

Co. Inst. pars 1 385. a. 3.

Title paramount by survivorship.

19 If lands be given to two brethren in Fee simple, with a warranty to the eldest and his heires, the eldest dieth without issue, the Survivour albeit he be heire to him, yet shall he neither vouch nor rebate, nor have a Warrantia cartæ; because his Title to the land is by relation above the fall of the Warranty, and he commeth not under the estate of him, to whom the Warranty is made.

Co. l. 2. 68. a. 1. *Tookers* case.

Attornment paramount 2 condicion.

20 If the Lessee for life or yeares attorne upon any condition subsequent, the condition is void; for if the reversion or remainder be once vested, it cannot be devested by any condition annexed to the Attornement; because the Grantee thereof is not in by the Lessee, but by the Grantor; but if one Attorn upon a condition precedent, there it is no Attornement before the condition be performed.

Co. l. 3. 83. a. 3 *Upton* and *Bassets* case, in *Twines* case.

An ancient right not barred.

21 In Upton and Bassets case in 3 Report fol. 83. it was agreed, that by the Common Law an estate made by fraud shall be avoided onely by him, that hath a former Right, Title, Interest, Debt, or Demand, as in the 33 of H. 6. Sale in market overt by Covin shall not barre a more ancient Right, neither shall a covenous Grant defeat an execution in respect of a former Debt, as it is agreed 22 Ass. P. 72. But he that hath onely a later Right, Title, Interest, Debt,

or

of Demand, shall not (at the Common Law) avoid a precedent Grant or estate made by fraud.

The Copiholder is in by him, that surrenders, and not by the Lord.

22 When a Copiholder surrenders to the use of another, and the Lord admits him; now he that is so admitted, is in by him that made the surrender; For, in a Plaint in the nature of a writ of Entry in te per, he shall be supposed in the per by him, that made the surrender; because the Lord is but an instrument to make the admittance, and he, that is admitted, shall not be subject to the charges and incumbrances of the Lord, for that the Lord hath but a customary power to make admittance, secundum formam & effectum surrisii redditionis: And therefore albeit the Lord grant the land over to another by copy; that is done without warrant, and the Lord may notwithstanding that, make admittance according to the surrender, and it shall be good, causa qua supra. So also if the Lord after such surrender grants the land to Cestuy que use and to a stranger, all shall enure to Cestuy que use, or if he admit Cestuy que use upon condition, the condition is void; For, after the admittance he is in by him that made the surrender, and by the custome, which is paramount the power of the Lord. Vide 21. 37.

Co.l.4.27.b.2. *Taverns* case. Co.l.6.63. *Swains* case. Co.ibid.pars 4 28.b.3. *Westwicks* case

The like.

23 If a man devise a terme to I.S. and the Executors agree and assent, that I.S. and I.D. shall have it, or that I.S. shall have it upon condition, in these cases, I.S. shall have the terme solely and absolutely; for after the assent of the Executors he is in by the devise: So likewise it was adjudged in the case of one Bunting, that if a Copiholder surrender into the Lords hands to the use of another for life, and the Lord admit him to hold to him and his heires, yet he, which is so admitted, hath but an estate for life; because he is in (after admittance) by the surrender. Vide 21. 37.

Co.ibid.28.b. 4. *Westwicks* case

Co.ibid.19.a.4 *Buntings* case.

The like in tail not barred.

24 In Formedon in descender if the Demandant be barred by verdict or demurrer, yet the Issue in tayle shall have a new Formedon in descender, upon the construction of the Statute of West.2. cap. 2. So also if he be barred in a Writ of Error; upon the release of his Ancestor, his issue shall have a new Writ of Error; For, he claimes in, not onely as heire, but per formam doni and by the Statute, which are paramount the verdict or demurrer; and he shall not be barred by the faint or false pleading of his Ancestor, so long as the right of the entaile remaines: And with this agrees 10 H.6. 5. 3 Eliz. Sir Ralfe Rowlets case, Dyer, 188.

Co.l.6,7.b.3. *Ferrers* case;

The like.

25 If there be two Joynt-tenants both within age, and they joyn in a feoffment, in this case a joynt right remaines in them; and therefore if one of them die, the right will survive, and the Survivour shall have the right of the land as from the first Feoffor.

Litt. § 634. Co l.8.43.a.4. *whittinghams* case.

A condition Paramount.

26 If a man make a lease for yeares upon condition, that if the Lessor out him within the terme, that he shall have fee; in this case, if the Lessor do out him, the interest of the terme is turned into a right, and yet there the Lessee shall have fee, and one reason thereof is; because the Title of the Lessee is by force of the condition, which is paramount the Ouster.

Co.l.8.76.a.2. In the Lord *Staffords* case;

Title Paramount discharges dower, &c. of debts, &c.

27 A Feme shall not be distrained for the Debts due to the King by the Baron, in the lands which she held in Dower, nor in the lands of the Inheritance of the Feme, nor in the lands, which she hath by purchase made by the Baron to him and the Feme, and their heires; because she claimes by Title paramount the Debts; and if she be therefore distrained by the Sheriffe, she shall have a Writ to discharge her, which see, Fitz. N. Br. 150 q.

Fitz.N.B.150. q.

Paramount & administration.

28 An Executor recovereth and dieth intestate, administration of the goods of the first testator is committed to I.S. Here, I.S. shall not sue execution upon this recovery.

Finch 131.

Finch ibid. 29 Dower cannot be aſſigned reſerving a rent, or with a remainder over; for ſhe is in from the husband, and not from him that aſſigneth Dower. Dower a title paramount.

Co. l. 4. 53. a. 3. in Rawlins caſe. 30 If a man make a Leaſe for 21 yeares reſerving rent with clauſe of re-entry, and after the Leſſee make a Leaſe to the Leſſor for 6 yeares to beginne two yeares after, and afterwards the rent being lawfully demanded is arreare; here, the Leſſor may lawfully re-enter and take advantage of the condition, notwithſtanding the acceptance of the ſaid future intereſt, and by the reentry ſhall defeat the future intereſt, which veſted in him. A Leaſe Paramount.

Co. ibid. 31 If a man make Feoffment in fee upon collateral condition, and after the Feoffee reſeiſe the land to the Feoffor, and after maybe the condition is performed; here, the reſeiſin of the land (being no ſuſpenſion of the condition) is no impediment but that the Feoffor ſhall take advantage of the condition, and ſhall thereby deſtroy the term, that he himſelfe had accepted, as it is holden. 20 E. 4. 19. & H. 7, 8. 20. H. 7. 4. A paramount feoffment with condition.

Fitz. 56. c. 32 If the eldeſt ſonne by the firſt venter preſent and die without iſſue, and after the Church happens to be voide, the youngeſt ſonne of the ſecond venter ſhall not preſent, nor have that Advowſon, ſo if there be two daughters of ſeveral ventres, and after partition one of them preſents and dies, the other ſhall not have it: but if they make partition to preſent by turn, and one of them die before any preſentment is made; in that caſe the other ſhall have the Advowſon; for ſhe then claimes paramount the deſcent from her ſiſter, viz. immediatly from their Anceſtor. A deſcent paramount.

Dyer, 54. 21. 34 H. 8. 32 Tenant in tail makes a feoffment before the Statute of 27 H. 8. to the uſe of his wife for life, the remainder to his ſonne and heir in fee, and after the Statute is made, and the Feoffor dies and his wife alſo, and the ſonne entres; In this caſe, it ſeemes that the ſonne is not remitted, for the Statute puts the poſſeſſion in him as the uſe was before; Howbeit it ſeemeth alſo, that his iſſue ſhall be remitted, becauſe he claimes paramount the Statute, viz. per formam doni; for the eſtate tail is ſtill in being, and was not extinct by the Statute; And in this caſe it is not material, whether the ſonne (when he entres) was at full age, or under age, for it ſeems he is not remitted albeit he were then under age: for if Tenant in tayle make a feofment to the uſe of himſelfe and his heires, and the Feoffor dies, his iſſue within age, and then comes the Statute, here the heire ſhall not be remitted, but (it ſeemes) his iſſue may, cauſa qua ſuprà. Vide ſuprà 5. Remitter.

Dyer 54. b. 21. 34 H. 8.

Dyer 54. b. 1. 34, and 35 H. 8 33 The Kings Tenant of Lands holden in Capite before the Statute of Uſes ſuffers a common recovery to the uſe of his ſonne and heire apparant and his wife, and of the heires of the body of the ſonne, after which Statute the ſonne hath iſſue and dies, the iſſue within age; In this caſe, the iſſue ſhall not be in ward during the life of the Feme for the ancient uſe of the Fee ſimple, which was paramount the Statute, remaines ſtill in the father, albeit he expreſſed not any uſe in Fee ſimple, and then by the Statute, the poſſeſſion was veſted in the ſonne and the feme, as the uſe was, and the Fee ſimple in the father, as he was Donor of the uſe, and not as one in remainder of a new Fee ſimple, for that would have altered the caſe: And in the ſame caſe, if the father had covenanted, that the ſonne immediately after his deceaſe ſhould have had poſſeſſion or uſe, all his land according to the ſame courſe of Inheritance, as they then ſtood, and that all men ſeiſed or to be ſeiſed, ſhould ſtand ſeiſed to the uſes and intents aforeſaid, yet the ſonne ſhould not be in ward, for it had been but a Covenant, which Wardſhip.

which changeth not the eſtate of the Fee ſimple; which was paramount the Statute, as afore is ſaid.

Emblements ſown.

34 If Tenant pur auter vie ſow the land, and Ceſtuy que vie die, the Tenant pur auter vie ſhall have the crop; ſo if the Baron ſow the Femes land, and the Feme die, the Baron ſhall reap the crop; Likewiſe if the Baron make feoffment in fee to the uſe of himſelfe for life, the remainder to the uſe of the Feme for life, with remainders over, and the Baron ſow the land and die, his executors ſhall have the crop, and not the Feme or Heire, becauſe death being the Act of God, it could not be foreſeen or prevented: Howbeit, if the Baron make feoffment in fee, to the uſe of himſelfe and his Feme for their lives with remainders over, and the Baron ſow the land and die, the Feme ſhall have the crop, becauſe ſhe was Joynt-tenant with her husband, and hath it by Title paramount the executor; So if the Baron ſow the land and die, and the third part is aſſigned to the Feme for Dower, ſhe ſhall have the emblements therewithall; becauſe, ſhe is in of her husbands eſtate paramount the Title of the executor, and likewiſe ſhall be endowed de optima poſſeſſione of her husband. Dyer 316. 2.15.Eliz.

31 Things are to be conſtrued, *Secundam ſubiectam materiam.*

Account by the Guardian.

1 It hath been a queſtion much controverted in the books of the Law, at what age of the heir, a Guardian in Soccage was compellable to render an accompt, whether at 14, or at 21. And the cauſes of that doubt have been both upon the words of the Statute of Marlebridge cap. 17. and likewiſe upon the original writ of accompt againſt ſuch a Guardian: The words of the Statute are theſe, Cum ad legitimam ætatem pervenerit, ſibi reſpondeat, &c. [a] And legitima ætas is 21 yeares: Alſo the writ of accompt reciting the ſaid Statute, ſaith, Quare cum de communi conſilio, &c. proviſum ſit, quòd cuſtodes, &c. in Soccagio hæredibus, &c. cum ad plenam ætatem pervenerint reddant rationabilem compotum, &c. [c] Whereupon it was gathered, that no action of accompt did lie againſt the Guardian in Soccage at the Common Law, untill the heire were of his lawfull and full age of 21 yeares: But legitima ætas (as the Statute hath it) or plena ætas (as the writ doth render it) are to be underſtood ſecundam ſubiectam materiam, viz. of the heire of Soccage land, whoſe lawfull or full age, as to the Cuſtodie or Wardſhip, is 14: and therefore upon conſideration had of the ſaid Statute and of all the Books, it was adjudged in the Court of Common Pleas P. 16. El. rot. 436. that the heire after the age of 14 yeares ſhall have an Action of accompt againſt the Guardian in Soccage, when he will at his pleaſure, and with this agrees Littleton, Sect. 123. Co.Inſt.pars 1 89.a.1. Stat.of *Marlebridge* 52 H.3.17. a 16 E.3. Waſt 109.&c. c 16 E.2. account 120. 17 E.2.ibid. 121. e 2 E.2. account. 14 E.3.ibid. 3 Mar.137. *Kelway*.131. Pl.16 El.Rot. 436. Litt. § 123.

Age, of infans to make a will.

2 Becauſe Littleton ſaith Sect. 123 that the Guardian in Soccage ſhall render an accompt of the mariage money to the heire or his executors, ſome have inferred, that an infant of the age of 14 may make a will; but the meaning of Littleton in that place is, that if after his mariage, he accompliſh his age of 18 yeares, he may then make a will, and conſtitute executors for his goods and chattells; for at that age he hath power by the Law to make a Will, and the words are to be underſtood Secundam ſubiectam materiam, and as they may ſtand with Law and Reaſon. Vide ſupra 15. 21. Co.Inſt.pars 1 89.b.2.

The Kings Councils.

3 The King of England is armed with divers Councils, viz. Commune Concilium, which is the Court of Parliament; Another is called Magnum Concilium, and this is ſometimes applied to the Houſe Co.Inſt.pars 1 110.a.2.

of

of Peeres alone, and sometimes out of Parliament to the Peeres of the Realme, being Lords of Parliament, who are called Magnum Concilium Regis: Thirdly, the King hath a Privy Council for matters of State: Fourthly, the King hath another Councel for matters of Law, and they are his Judges of the Law: Now therefore, when it is spoken generally of the Kings Councel, it is to be understood secundum subjectam materiam, as if matter of Law be concerned, then his Councel at Law, viz. his Judges are to be understood, if matter of State, his Privy Councel, &c.

Co. Inst. pars 1 302. b. 1. 4 If the Tenant for life, and he in the Remainder or Reversion in Fee joyn in a Feofment by Deed, the Livery of the Freehold shall move from the Lessee, and the Inheritance from him in the Reversion or Remainder, from each of them according to his estate. A feofment by two.

Co. Inst. pars 1 303. b. 2. 5 Every man shall plead such pleas, as are pertinent for him Secundum subjectam materiam, viz. according to the quality of his case, Estate, or Interest, as Disseisors, Tenants, Incumbents, Ordinaries, and the like. Pleas proper

Co. Inst. pars 1 200. b. 3. 6 One Tenant in Common may enfeoffe his Companion, but not release; because the Freehold is several Joyn-tenants may release, but not enfeoffe, because the Free-hold is joynt: But Coparceners may both enfeoffe and release, because their seisin to some intents is joynt, and to some several. Feofment Releases.

Co. l. 3. 50. b. 4. Sir *George Browns* case. 7 The words of the Statute of 11 H. 7. cap. 20. (which prohibits a Feme to alien the lands of her deceased husband) are these, that she shall not discontinue, alien, release, or confirm them with Warranty, where Warranty seems to be referred to any Discontinuance or Alienation, as well as to release and confirmation; So that if a Feme Tenant in speciall taile (after the decease of her husband) make a Lease for three lives (not warranted by the Statute of the 32 H. 8. cap. 28.) without Warranty, he in the Reversion or Remainder by force of the said Statute of 11 H. 7. shall not enter: but it was adjudged in Sir Geo. Brownes case in the 3 Report, that in that case he might enter, and that these words, with Warranty, shall be onely referred to Releases and Confirmations, which indeed do not make a discontinuance without Warranty for the intent of the said Act of 11 H. 7. was not onely to prohibit every barre, but also every manner of discontinuance, which might put the heire to his real action; whereby he might perhaps be disinherited, or at least greatly delayed; And therefore in regard Releases and Confirmations do not make discontinuance without Warranty, these words, with Warranty, are to be construed Secundum subjectam materiam, and shall be referred to them onely, to make them equivalent to such an estate, which passeth by Livery, and which of itselfe without Warranty makes a discontinuance. Statute of 11 H. 7. 20. interpreted, for discontinuances.

Co. l. 4. 10. b. 4. *Bevils* case. 8 The Statute of 32 H. 8. cap. 2. (which provides, that none shal have any Avowry or Conusance for any rent suit, or service, unlesse seisin were had within 40 years before the Avowry made) extends not to any such Rent or Service, which by common possibility cannot happen or become due within 60 yeares; as if the Seigniory consists upon Homage and Fealty onely; for the Tenant may live 60 yeares after he hath done them: So also if the Service be to cover the Hall of the Lord, or to go to Warre with him, when the King maketh Warre against his enemies, such casual Services, which by common possibility cannot happen within 60 yeares, are not within that Act, &c. Likewise writs of Escheat, Cessavit, or Rescous are not within those branches of the same Statute, which limit the seisin of land, because in those writs the seisin is not traversable, but the tenure, and in those 32 H. 8. 2. interpreted for rents.

those writs of Escheat and Cessavit, albeit they demand the land; yet need they not alleadge any seisin in the same lands, &c. as the said Statute requires; because that Act onely extends to such a writ, where the Demandant or his Ancestors may have seisin of the land in demand within the time of limitation prescribed by the Act, and the Statute doth not force them to any impossibility, &c.

Scandalum Magnatum.

9 The Lord Cromwell brings an Action de scandalo magnatum upon the Statute of 2 R. 2. cap. 5. against Vicar Delmy, for speaking these words unto him; You like of those that maintaine sedition against the Queens proceedings, unto which the Defendant pleades special justification, that the Plaintife procured two to preach in his Church, which enveighed in their Sermons against the Book of Common Prayer, and because the Defendant did prohibit them, the Plaintife said to the Defendant, Thou art a false varlet, I like not of thee, to whom the Defendant said, It is no marvel though you like not of me, for you like of those, (inuuendo the two, that should have preached) that maintaine sedition (innuendo seditiosam illam doctrinam) against the Queenes proceedings. And this was adjudged a good justification; For, in case of slander for words, the sence of the words are to be taken, and the sence of them doth best appeare by the cause and occasion of speaking them, according to the Rule, Sensus verborum ex causa dicendi accipiendus est, & sermones semper accipiendi sunt secundum subjectam materiam: And therefore in this case the Counsel of the Defendant was said to have done well in shewing the special matter, whereby the sence of this word (sedition) might appeare upon the coherence of all the words, taken together, viz. that the Defendant meant the seditious doctrine against the Queens proceedings in the Act of 1 Eliz. by which the Book of Common Prayer was establisht; and that he did not intend any such publique or violent Sedition, as was alleadged by the Plaintife; and as ex vi termini per se, the word it selfe would import, &c. And it was said, Quæ ad unum finem loquuta sunt, non debent ad alium detorqueri, &c.

Co The Lord *Cromwels* case.

Common.

10 If Common be said to be appertaining to a Mease, Land, Meadow, and Pasture, time out of mind, that shall be adjudged Common Appurtenant, and not Common Appendant; for it is against the nature of Common Appendant to be Appendant to Meadow or Pasture; And therefore in that case the subject matter and the circumstance of the case ought to direct the Court to give Judgement, whether the Common be Appendant or Appurtenant.

Co. l. 4. 37. a. 4. & 38. a. 3. *Tirringhams* case.

Accessary in manslaughter.

11 In Appeal of Murder against A. as principal, and against B. as accessory before the fact, A. was found guilty of Man-slaughter, but not of Murder; in this case B. was acquit, because there cannot be an Accessary before the fact in Manslaughter, which allwayes happens upon a suddaine debate or effray; for, if it be premeditate, it is Murder.

Co. l. 4. 43. b. 4. *Bibithes* case.

Joint warranties, or words.

11 Joynt words of the parties shall by construction of Law be taken respectively & severally according to the several interests of the Grantées; as Warranty made to two of certain lands, shall enure as several Warranties; in regard they are severally seised, the one of part of the land, and the other of the residue in severalty; So also a joynt Covenant taketh severally in respect of the several interests of the Covenantées. Vide 16 Eliz. 337, 338. Dyer inter Sir Anthony Cook, and Weston, in Justice Windhams case Co. l. 5. 7. b. 4. Sometimes also joynt Words or Grants shall enure severally, in respect of the incapacity or impossibility of the Grantées to take joyntly, as a Lease made to an Abbot and a secular man; or to two men or two women, and to the heires of their two bodies engendred; for in these and the like cases the inheritance is several. Vide 19.

Co. l. 5. 7. b. 4. 16 H. 6. 63, 64.

6 E. 2. Covenant. Br. 49.

Co. ibid. Justice *Windhams* case.

12 In

Co.l.5.103.a. *Hungates* caſe.

12 In Debt upon an Obligation brought by Hungate againſt Meſe and Smith, whereof the Condition was to perform an Arbitrament betwixt the Plaintife on the one part, and the Defendants on the other part, Ita quod Arbitrium prædictum fiat & deliberetur utrique partium prædictarum, before ſuch a day, And the Defendants pleaded, that the Arbitrament was (indeed) made before the day agreed upon, and was alſo delivered unto the Plaintife, and unto Meſe one of the Defendants, but not unto Smith, whereupon the Plaintife demurred, and Judgement was given againſt the Plaintife; for, in that caſe, it was reſolved, that ſometimes the word uterque, is diſcretive, and hath the quality of ſevering, and ſometimes collective, and hath the property of joyning together, as if two or three be bound in an Obligation, & utrumque eorum this word utrumque, makes the Obligation ſeveral; but in the aboveſaid caſe it ſhall be taken collective; And the Rule alwayes to know, in which of theſe two ſences it ſhall be taken, is to conſider the Subject matter, and to make conſtruction according to the congruity of Reaſon, & ut evitetur abſurdum; as in the caſe of the 39 H. 6, 7. the Condition of an Obligation was, ſi uterque eorum, viz. the Obliger and the Obligée ſteterit arbitrio Roberti Bozom, &c. And it was adjudged that each of them was bound pro parte ſua, and not the one for the other; for that would be abſurd and againſt the congruity of Reaſon, And in the ſaid caſe of Hungate, in as much as both the parties were equally ſubject to the penalty and danger, reaſon requires, that the Arbitrament ſhould be delivered to both the parties, to the end they may perform it, and avoid the danger of breaking it, &c. Vide ſuprà 8, 9. A joint obligation.

Dyer 28. H.8.19.b.

Co.l.62.a.2. *Catesbyes* caſe.

13 The time for the Biſhop to collate by lapſe is Tempus ſemeſtre, halfe the yeare, according to the Kalender, and is not to be accounted according to 28 dayes for each Moneth; for verba ſunt accipienda ſecundum ſubjectam materiam; and therefore becauſe this computation of moneths concernes thoſe of the Church, it is great reaſon, that the computation ſhall be according to the computation of the Church, wherewith they are beſt acquainted. 8.4. Vide Dyer 327. 7. *Tempus Semeſtre.*

Co.l.7.10.a.3. *Calvins* caſe.

14 In regard the King (albeit he be but one perſon, yet) hath two ſeveral capacities in him the one natural, as he is a man, the other politique, ſo called, becauſe framed by the policy of man, if it be demanded, to which of theſe capacities ligeance is due; The anſwer is, that it is due to the natural perſon of the King, (which is ever accompanied with the politique capacity, and the politique, as it were appropriated to the natural capacity) and is not due to the politique capacity onely, that is, to his Crowne or Kingdome diſtinct from his natural capacity; For every Subject is preſumed by Law to be ſworne to the King, which is to his natural perſon, and likewiſe the King is ſworne to his ſubject (as it appeareth in Bracton l.3. de actionibus cap. 9. fol. 107.) which oath he taketh in his natural perſon, becauſe the politique capacity is inviſible and immortall, nay, that capacity hath no ſoul, being framed by the policy of man; And therefore in all Indictments of Treaſon, when any do intend or compaſſe mortem & deſtructionem Domini Regis (which muſt needs be underſtood of his natural body, his body politique being immortal, and not ſubject to death, the indictment concludeth, contra ligeanciæ ſuæ debitum, by which it plainly appeares, that ligeance is due to the natural body of the King, that capacity being (indeed) the onely ſubject matter capable thereof. Allegiance due to the natural capacity.

Co.l.8.85.b.3. Sir *Richard Pexhul.* caſe.

15 If A. deviſeth to B. ten bullocks and ten pounds iſſuing and payable out of his lands and tenements quarterly at the moſt uſual Feaſts, &c. Here, theſe in words payable quarterly, ought to be underſtood Ten Bullocks, and ten pound rent.

stood Secundam subjectam materiam, and to have reference to the rent, for ten bullocks per annum cannot be delivered quarterly.

Offices of trust personal.

16 The Office of Marshall of the Marshalsey cannot be granted for yeares; because it is an Office of great trust annexed to the person, and concernes the administration of Justice, and the life of the Law, which is to keep such as are in execution in salva & arcta custodia, to the end they may the sooner pay their debts; and this trust is inforceable and personal, and shall not be transferred to executors or administrators; for the Law will not confide in persons unknown for the ordering of matters, which concerne the administration of Justice, &c. Co. l. 9. 96. b. 4. Sir *George Reynels* case.

Bond taken by the Sheriff.

17 In debt brought by Dyve against Maningham upon an obligation of 40 li. with condition to save Dyve (being then high Sheriffe of the County of Bedford) harmeleſſe, and to be ready at his command, as his true prisoner, &c. the Defendant pleades the Statute of 23 H. 6. cap. 10. by which such bonds taken by the Sheriffe colore officii, are made void, and farther saith, that one Thomas Palley purchased a Liberari fac. out of a recognisance to him made by the said Defendant, and procured it to be directed to the said Sheriffe of Bedford to be serued and certified; and shewed farther, that the King had sent to the Sheriffes of London, Middlesex and Hertford, other writs in forme aforesaid, and that the same Sheriffs returned the writ into the Chancery, &c. In this case, one exception taken to the Defendants plea was, for that there were divers Sheriffes named in it, and at last it is said, that the same Sheriffe returned the writ, &c. which was said to be uncertaine; but it was resolved to be certain enough, and that it shall be referred to the Sheriff of Bedford; For, the returne contained an extent of land in the County of Bedford, and none could do that, but the Sheriffe of Bedford, and the whole summe of the execution was referred to him, and that could not be so, unleſſe the Sheriffe of Bedford had made the return, &c. Plowd. 65. b. 2. *Dyve* against *Maningham.*

Release of actions.

18 If a man be outlawed in an action personal by processe upon the original, and after brings his writ of Error; Here, if he, at whose suit he was out-lawed, will plead against him a release of all actions personal, that seemes to be no plea; for by the said action he shall recover nothing in the personalty, but onely to reverse the out-lawry; Howbeit, in the same case, a release of the writ of Error is a good plea: And so note that, an action real or personal doth imply a recovery of something in the realty or personalty, or a restitution to the same; but a writ implyeth neither of them, &c. Co. Inſt. pars 1 289. a. 2. Littl. § 503.

Joint and several covenant

19 S. and his wife brings a Action of Covenant against B. upon Covenant made by Indenture tripartite, in which B. Covenants with the Plaintifes, and with I. S. and his wife, & assignatis suis, & cum quolibet & qualibet eorum, that he was sole seised of the land, &c. And in a writ of Error in the Exchequer Chamber it was adjudged, that the Action would not lie; because the other Covenantées ought to have joyned with the other Plaintifes; and this diversity was agreed; when it appears by the Count, that each of the Covenantées hath or ought to have a several interest or estate, there the Covenant by these words (cum quolibet eorum) is several; but when they have a joynt interest, there the words (cum quolibet eorum are void, and signifie nothing; As if a man let black acre to A. white acre to B. and græn acre to C. and Covenant with them, & quolibet eorum, that he is right owner of them, &c. In this case in respect of the said several interests, by the said words, & quolibet eorum, the Covenant is made several: But if he demise those acres to them joyntly, then those words cum quolibet eorum, are void; for a man by his Covenant (unleſſe Co. l. 3. 18. b. 4. In *Slingbies* case.

leſſe in reſpect of ſeveral intereſts) cannot firſt make the Covenant joynt, and then make it ſeveral by thoſe or the like words, cum quoliber eorum; becauſe albeit divers perſons may bind themſelves, & quemliber eorum, and ſo the Obligation ſhall be joynt or ſeveral at the election of the Obligée, yet a man cannot bind himſelfe to three, and to every of them to make it joynt or ſeveral at the election of ſeveral perſons for one and the ſame cauſe; for that the Court will be in doubt, for which of them they ſhould give Judgement, which the law will not ſuffer, as it is held in 3 H. 6. 44. for there one brings a Replevin againſt two of one ore, who made ſeveral avowries, each of them by himſelfe in his own right, and there by the advice of all the Juſtices both the Avowries did abate for, his inconvenience, that if both the iſſues ſhould be found for the Avowants, the Court could not give Judgement to them ſeverally of one and the ſame thing, &c. Vide 11.

When a *Scire facias* and when not.

Co. l. 9. 96. a. 3. in Sir *Geo. Reynals* caſe.

20 When two diſtinct matters of Record amount to an office, ſometimes there ought to be a Scire facias, before ỳ King doth ſeiſe; And ſometime not according to the ſeveral ſubject matter; As if it be found by Office, that the Manor of D. is holden of the King, and it appears alſo by fine upon Record, that the Manor of D. is alienen in Mortmaine; In this caſe there ought to be a Scire facias, in which it may appears by averrement that it is all one and the ſame Manor (for they may be two ſeveral Manors of one name) and that he that alienen it was thereof ſeiſed; becauſe both theſe matters upon record without ſuch averrement will not put the party to anſwer; but when the identity of the thing appeares to the Court, and that it cannot be divers; there the two matters ſhall then alſo amount to an office, and the King may ſeiſe without a Scire facias; As in the caſe of Sir John Savage, who was Sheriffe of the County of Worceſter for life by Letters Patents under the Great Seal; for he being inſtead of two voluntary eſcapes of Felons, it was holden per Curiam in B. R. that theſe words amounted to an Office, and that the King was ſeiſed without a Scire facias; And the reaſon was, becauſe it appeared to the Court, that there could be but one Sheriffe in one County; and therefore there was no néed of any Scire facias in that caſe, &c.

Advowſon Patron.

Co. l. 7. 16. in *Maunions* caſe.

21 In a Quare impedit, when the Advowſon is likely to come in queſtion, the writ ſhall abate, unleſſe the Patron be therein named; but when the preſentation onely is to be recovered and not the Advowſon, neither yet the Patron to be put out of poſſeſſion; In that caſe the Writ is adjudged good without naming the Patron, &c. 7 H. 4 25. 27

Livery by the Leſſor.

Co. Inſt. pars 1 52 a. 3.

22 If Leſſée for life make a Déed of Feoffment, and a Letter of Attorney to the Leſſor to make Livery, and the Leſſor maketh Livery accordingly, notwithſtanding all that, he ſhall enter for the forfeiture, but if Leſſée for yeares make a Feoffment in Fée, and a letter of Attorney to the Leſſor to make Livery, and he maketh Livery accordingly; this Livery ſhall bind the Leſſor, and ſhall not be avoided by him; for the Leſſor could not make Livery as Attorney to the Leſſée; becauſe he had no Freehold, whereof to make Livery; but the Freehold was in the Leſſor, &c.

Fine by Tenant in taile.

Co. ibid. 332. b. 3.

23 If Tenant in taile make a Leaſe for yeares of lands, and after levie a fine. this is a diſcontinuance, for a fine is a feoffment of Record, and the Freehold paſſeth: but if Tenant in Taile maketh a Leaſe for his own life, and after levie a fine, this is no diſcontinuance, becauſe the reverſion expectant upon a State of Freehold, which lyeth onely in grant, paſſeth thereby, &c.

24 Vide Max. 105. Pl. 7.

25 If

Forcible Entry attaint.

25 If a writ of forcible entry and detainer be brought against A. and five more, and the Jury find all guilty of the forcible entry, and onely A. of the detainer; in this case, if the verdict be false, albeit the original writ be intirely brought against all, yet the sir shall have one Attaint for the false verdict upon the forcible entry, and A. shall have another single Attaint for the finding of the detainer. Dyer, 241. 45. 3, 4, P.M.

Contract by a servant.

26 A servant makes a bill, testifying the buying of ware to the use of his Master, and this without Seale, in which he binds himself to pay the debt; yet, In this case, debt lyeth not against the servant, but onely an Action upon the case: for it is the debt of the Master; and the Assumpsit of the servant. Dyer, 230. 56. 8. El.

Copihold, Dower.

27 The Custome of a Mannor is, that the Lord, the Surveyor, or his deputy may devise by copy, the Lord deviseth authority to two to make Customary estates for payment of his debts, and dies; they hold Court in their own names, and grant copies in reversion according to the Custome, the Feme of the Lord hath one of the Copiholds assigned by the Sheriffe upon recovery of the third part of the Mannor in Dower; And it was held, that she should avoid the grant made by the two assignes, because she claimes by Title of Dower, which is paramount the devise. Dyer, 251. 89. 8 Eliz.

32 Ac According to the end.

Knight-service the defence of the Realm.

1 The Tenant in Knight-service, that is able to performe the service himselfe, may nevertheless, if he please, performe it by another, as well as he that is sick, or an Infant, or a Corporation aggregate of many, &c. for Sapiens incipit a fine, and the end of this service is for defence of the Realme; And therefore if it be done by an able, and sufficient man, and the end, for which the Law ordained it, be effected, it is duly performed, as it ought to be. Co. Inst. pars 1 70. b. a.

Tender to the heir female.

2 If the Lord tender a comonable mariage to the heire female within the two yeares, and she marry elsewhere within those two yeares, the Lord shall not have the forfeiture of the mariage; because the onely end, which the Statute of West. 1. cap. 22. giveth those two yeares, is for the Lord to make his tender (Co. l. 6. 71. a. The Lord Darcies case) or rather, that he should not lose the advantage of making his tender, And the benefit of those two yeares are given unto him (as it were in lieu of the forfeiture, in case the heire female should refuse his tender; for if he make tender within the two yeares, and she accept the same, and marry immediately after mariage she is out of ward. Co. Inst. pars 1 79. a. 1. 35 H. 6. tit. gard. 71.

Errour sued against a villaine.

3 If Villanage be pleaded by the Lord in an action real, mixt, or personal, and it is found that he is no Villaine, the bringing of a Writ of Errour is no enfranchisement; because the end of bringing that Writ against the Villaine, is not to commence any new suit against him, but onely to defeat the former Judgement. Co. Inst. pars 1 127. b. 4. 18 E. 4. 6. & 7.

Castles for defence, and others.

4 If a Castle, that is used for the necessary defence of the Realme, descend to two or more Coparceners, this Castle might be divided by Chambers and Roomes as other houses be; but yet for that it is pro bono publico & pro defensione regni it shall not be divided; for as one saith, Propter jus gladii dividi non potest; And another saith, Put le droit del eiche, que ne soefire division, en aventure que la force del Realme ne defaille par tant: But Castles obtained for another end, viz. for habitation and private use, and not for the necessary defence of the Realme, ought to be parted between Coparceners as well as other houses; and mines may also be thereof endowed, but cannot be of Castles for defence, &c. Co. Inst. pars 1 165. a. 4. Bract. l. 2. fol. 76. Flet. l. 5. c. 9. Britton 186, 187. Co. ibid. 31. b. 3

Co. ibid. 368. b. 2.

5 It is ordained by the Statute of 21 H. 8. cap. 19. That, if the Lord ſhall diſtraine upon the lands and tenements holden, &c. he may then avow, &c. upon the ſame lands, &c. as in lands, &c. within his Fee or Seigniory, &c. without naming any perſon certaine, and without making Avowry upon any perſon certaine, &c. Here, albeit the purview of this Act be generall, yet all neceſſary incidents are to be ſupplied, and the Scope and end of the Act to be taken; And therefore, though he need not to make his Avowry upon any perſon certaine; yet he muſt alleadge Seiſin by the hands of ſome Tenant in certaine within forty yeares; for otherwiſe, rent, and other annuall payments are not recoverable, by the expreſſe limitation of the Statute of 32 H. 8. cap. 2.

Avowry upon diſtreſs for rent.

Co. Inſt. pars 1 288. b. 1. Litt. § 503.

6 If a man be out-lawed in a perſonall Action by Proceſs upon the Original, and bring a Writ of Error, if he, at whoſe ſuit he was out-lawed, will plead againſt him a Releaſe of all manner of Actions perſonall, that ſeemes to be no plea; for by that Action he ſhall recover nothing in perſonaltie; But the end of the Writ of Error is onely to reverſe the out-lawry.

Releaſe of all actions no plea in errour.

Co ibid. 368. a. 3. Plowd. Com. 91. The Parſon of *Honylanes* caſe Co. ibid. 369. a. 4.

7 If the Tenant in an Aſſiſe of an houſe deſire the Plaintife to dine with him, which the Plaintife doth accordingly, and ſo they be both in the houſe together, (and in truth) one pretendeth one Title, and the other another Title; yet the Law, in this caſe, ſhall not adjudge the poſſeſſion in him, that right hath; becauſe the Plaintife came not thither to claime his right, but onely to dine there at the inſtance of the Tenant: And it would be to his prejudice if the Law ſhould adjudge him in poſſeſſion, and (doubtleſſe) a Treſpaſſer he cannot be; for that he came thither upon the Tenants invitation.

Licence to ſeiſin.

Co. ibid. 369. a. 4.

8 A Leaſe for yeares to another to the intent to try the Title in an Ejectione firma, is out of the Statute of 32 H. 8. cap. 9. which prohibits the buying and ſelling of pretenced Rights or Titles; becauſe it is directed to a lawful end, and is in a kind of Courſe of Law; but if it be made to a great man, or any other, with purpoſe to ſway or countenance the cauſe, that is to be taken within the ſame Statute, being chiefly intended for the ſuppreſſion of ſuch abuſes in the Common-wealth.

An *ejectione firmæ* no bought title.

Co. Inſt. pars 1 381. b. 3.

9 Such conſtruction muſt be made of a Statute, that the end, for which it was ordained may be alwayes purſued, in ſuppreſſion of the miſchiefe and advancement of the remedy, as by this caſe it appeareth; A Fine levied by the husband onely is within the letter of the Statute of Gloceſter 6 E. 1. cap. 3. but the miſchiefe was, that the heire was barred of the inheritance of his mother, by the warranty of his father without Aſſets, And this Act intended to apply a remedie, viz. that it ſhould not barre, unleſſe there were Aſſets; and therefore the miſchiefe is to be ſuppreſſed, and the remedy advances.

Stat. of Glouc. 6 E. 1. 3.

31 E. 3. Ioynder in aid, 10. Finch 13.

10 The Vouchée cometh into the Court to be viewed, and being viewed, is awarded of full age; yet he ſhall not be driven to anſwer, till he come in to the ſame intent by other proceſſe.

View of vouchee.

19 E. 4. 3. Finch, 13.

11 The Vouchée upon a Grand capeas valentiam, ſhall not loſe the lands, though he cannot ſave his default; becauſe the proceſſe is onely to this end, viz. that he ſhould appeare. Finch 13.

Apparance of vouchee.

50 Aſſ. Pl. 2. Finch, ibid.

12 A man that is warned by Writ to anſwer to a matter, ſhall not be driven to anſwer any other matter than is contained in that writ though the King be party; As if by Office it be found, that lands in Chiefe deſcended to I. S. a fool natural, and that A. occupieth them; whereupon a Scire facias goeth out againſt A. to anſwer, why the lands ſhould not be ſeiſed into the Kings hands for the Idioſy of I. S. upon which A. commeth in and pleads, that I. S. when he was

Not forced to anſwer to two ſeveral things.

was of perfect memory, made a release to one B. who enfeoffed A. This is good enough without shewing any licence of Alienation to discharge himselfe for the purchasing of those lands.

Fine with Proclamations.

13 Tenant in tayle generall having issue a daughter, levies a fine in Trinity Terme, and dies in August following, the issue immediately brings a Formedon, and hanging the Writ, the Proclamations are made; yet in this case the issue is barred; for the end of making the Proclamations is not to barre the entaile, because that is barred before by the fine; but the onely end of making the Proclamations (by the Statute of 32 H. 8.) is to distinguish the fine, that shall barre the estate taile, from a Fine at the Common Law; for the Fine that shall barre such an estate shall be levied according to the Statute of 11 H. 7. viz. with proclamations, &c. Co.l.3.50.b.3: *Pits flowes* case

Statute 32. H.8.17.

14 The Statute of 32 H. 8. cap. 37. saith, that the husband shall have an action of debt for the arrearages due in the life time of his wife out of any estate, which he held in her right: And this is to be understood as well of arrearages due before as after, mariage: for in that Statute the end of naming the Feme (wife) is onely to declare and describe the condition of the Feme, and not to imply, that the arrearages ought to incur after the coverture. Co.l.4.51.b.4 *Andrew Ognels* case.

Where a Writ is to be returned, and where not.

15 There is an apparent diversity betweene a Capias in processe, and a Capias ad satisfaciendum; for if the Capias in processe be not returned, the arrest is tortious; because there the end of the arrest is, that the party may appeare and answer the Plaintife: But in all Writs of execution, when the Sheriffe alone doth execute them (as a Capias ad satisfaciendum, habere facias seisinam or possessionem, fieri facias, liberat, &c.) if the execution be duly served, it is good, although the Writ be not returned; for there the Plaintife hath the end, and effect of his suit, and then nothing else is to be done on his part afterwards: But in case of an Elegit, because the extent is to be made by inquest, and not by the Sheriffe alone, that ought to be returned, otherwise it is nothing worth. Co.l.5.90.a.3. *Hoes* case. Tresi. 33 El. *Mounts* case.

Collation no disseisin.

16 If a Bishop collate without Title to a Church presentable, and his Clerke is inducted, yet this shall not put the right Patron out of possession; for that is nothing else but a provision, to the end divine Service may be celebrated, until the Patron present, and it is no more than belongs to his Office to do. Co.l.6.50.a.1. *Boswels* case.

Dignity entaile forfeited.

17 If the Dignity of an Earledome had been intailed to the heires male, it might have been forfeited for Treason before the Statute 26 H. 8. cap. 13. by reason of a secret Condition in Law annexed unto it; for Earles are created for two purposes, viz. Ad consulendum Regi tempore pacis, & ad defendendum Regem & patriam tempore belli; and therefore they wear a Cap of honour and a Robe, as they are Counsellors; and are girded with a sword, to represent them gallant Champions and Cavaliers; Now then when such a person against his duty and the end of his dignity, commits Treason against the King, his dignity (though entailed) is forfeited by that Condition impliciti annexed to his estate. Vide 42. 7. Co.l.7.34.a.4. *Nevils* case.

The end to be perfect.

18 The Scope and end of every matter is principally to be considered, and if the Scope and end of the matter be satisfied, then is the matter it selfe, and the intent thereof also accomplished: And therefore in Fogassues case in the Commentaries, because the King had meanes of being intitled to the Custome of the Wood, viz. by causing it to be weighed, and the end and Scope of the Statute being in that case performed, he was not to incurre the penalty of forfeiting the Wood. Pl.co.18.a.1. *Fogassues* case.

19 To let a prisoner in execution go at large upon bond, &c. is expressely

Plowd.com.67 a.4. Dive against Maningham. Sheriffs bond void.

precisely against the Statute of 23 H. 6. cap. 10. because the end and intent of making that Statute was to prevent all such bonds, &c. made for that purpose: that abuse having been much practised by Sheriffes before the making of that Statute.

Dyer 48.19. 32 H.8. Jurorsass.

20 If the Plaintife importune a Juror to appeare and passe upon the verdict according to his conscience, albeit he was not summoned by the Sheriffe or his ministers to appeare, yet this is not any unlawfull practise or cause of challenge of the Juror, because the end why he was impanelled, was to discharge a good conscience upon the verdict.

Co.l.5.87.a.3. In Blumfields case. Execution.

21 In debt when the Plaintife hath had execution of the Defendants lands, and after the lands are evicted, in such case before the Statute of 32 H. 8. 5. the Plaintife could not have had a new execution, for the execution of lands was valuable, and accounted in Law for a satisfaction, and to avoid inanitenesse, there could be but one valuable satisfaction or execution with satisfaction at the Common Law; but execution of the body is not a valuable execution, and therefore the Plaintife after the Defendants death may have new execution, until he be fully satisfied, for that is the end and fruit of his suit, Et finis rei attendendus est, & fines mandatorum Domini Regis per rescripta sua (viz. brevia) diligenter sunt observandi.

22 Vide 8 case of Essoines.

33 *Qui admittit medium dirimit finem.*

Littl. § 237. Disseisin of rent.

1 Rescous, Replevin, and Inclosure are three sorts of Rent Service; because (as Littleton saith) the Lord is by them disturbed of the meanes to come by his rent.

Co.Inst.pars 1. 161.a.4. Turning a water-course.

2 The turning of the whole streame that runnes to a Mill is a disseisin of the Mill it selfe (9 Ass. 19. Mirr. cap. 2. Sect. 15. Britt. 108. 114. 118. 141.)

Co.ibid. Disturbance.

3 If a man be disturbed to enter and manure his land, this is a Disseisin of the land it selfe; for, Qui obstruit additum, destruit commodum (26 Ass. 17. 7 E. 4. 2. Litt. 49 E. 3. 14. b.) And therefore where it is said, that a man shall not be punished for suing of Writs in the Kings Court; be it of right or wrong, it is regularly true: but it faileth in the special case of the Writ of Replevin for the cause aforesaid, Fitz. N. B. 42. S. 22 E. 3. 15. 43. Ass. 40. 43 E. 3. 29. Faux judgement 10. 8 E. 4. 15. per Moile a R. 3. 19. Replevin.

Littl. § 240. Co.ibid. 162.a.3. Bract. l.2.16. Brit. 19.88. Fleta l.3.5.7. Terrified from distraining.

If the Lord of a rent Service, or the Grantee of a rent charge or Seck, be going upon the land to distraine for the rent, and the Tenant hearing it, forestalls his way, and threatens him in such sort, that he dare not proceed for feare of the losse of life or member: this is also a Disseisin of the rent; causa qua supra: But this must not be vagus & vanus timor, sed talis, qui cadere possit in virum constantem, and not in hominem varium & meticulosum; talis enim debet esse metus, qui in se continet mortis periculum, & corporis cruciatum.

Co.ibid.172.b.1. 13 E.3. Leg.50. Infant shall not wage.

5 An Infant cannot make his Law of non summons (for, according to the Paritme in Law, Minor jurare non potest). And therefore in that case the default shall not grieve him, forseeing the meane to excuse the default is taken away by Law, the default it selfe shall not prejudice him.

Co.ibid.233.b.3. 15 E.4 3. 5 E.4.26. The Keeper of a Park making waste.

6 If the Keeper of a Parke fell or cut any Trees, Woods, or Underwoods, and convert them to his own use, this is a forfeiture of his office; for destruction of the nest is, by a meane, destruction of the nison: So it is also if he pull down any house, wherein the hey, wherewith the Deer are fed, is usually put; for that also tendeth to the

the deſtruction of the Deer. 28 H. 8. Beudloes entre veſque de Londres & Hieron, Co. l. 9. 50. 95, 96. 99.

Eſcape. 7 If a Gaoler, that hath a priſoner in his cuſtodie upon execution, ſuffereth him to go at large, though it be with a Keeper, he is liable to an eſcape; for he ought to keep him in ſalva & arctâ cuſtodia, to the end he may the ſooner pay his debt. Co. l. 3. 43. b. 4. Co. ibid. 260. a. 3. *Boytons* caſe.

Entry Releaſe of all actions. 8 Where a man may enter, a releaſe of all Actions doth not barre him of his right, becauſe he hath another remedie, viz. to enter: But where his entry is not lawfull, there a releaſe of all actions is, by conſequence, a barre of his right, becauſe he hath releaſed the meane, whereby he might recover his right; As if the Diſſeiſee releaſe all Actions to the heir of the Diſſeiſor, which is in by deſcent, he hath no remedie to recover the land; becauſe he had no other meanes to recover it, but by Action, and of that he is barred by his Releaſe. Co. Inſt. pars 1. 286. a. 3. Co. l. 8. 152. a 1. Sir *Edward Althams* caſe.

An Alien hindred of Trade. 9 To hinder an Alien from getting into his hands by Gift, Trade, or other lawfull meanes any treaſure, or other perſonal goods whatſoever, as alſo an houſe for his neceſſary habitation, and conveniencie of trading, and from maintaining any Action for the ſame, were in effect to denie unto him Trade and Traffick, which is the life and ſupport as of every Iſland, ſo more eſpecially of this Kingdome. Co. l. 7. *Calv.* caſe 17. a.

Releaſe of all demands. 10 The reaſon, why a Releaſe of all Demands doth barre a man of all his Right, Title, and Intereſt in any Lands, Tenements, Goods, Chattels, &c. is becauſe by ſuch a Releaſe the meanes and remedies of recovering them are utterly extinct, and ſo by conſequence, the right and Intereſt in the things themſelves. Co. l. 8. 154. a. 3. Sir *Edward Althams* caſe.

Nuiſances. 11 If a man by erecting a Building or a Wood-pile doth ſtop up or hinder the light of his neighbours houſe, or if by building an Hogs cote near his neighbours dwelling-houſe he much annoyes the ſame, or makes the aire infectious or unholſome, an Action upon the caſe will lie in either of theſe caſes; for hereby he hinders and interrupts the peaceable dwelling of his neighbour, which is the principal end, for which the houſe was at firſt erected. Co. l. 9. 58. a. 2. *Aldreds* caſe.

A Legacie of a Leaſe. 12 A. poſſeſt of a Leaſe for 500 yeares deviſeth it to B. for life the remainder to C. and his heires and dies; here albeit the whole terme be in B. and C. hath nothing but a poſſibility or a future Intereſt, and therefore cannot grant it over; yet in as much as the Legacie or Deviſe to C. is in eſſe and preſent, and therefore may be diſcharged, the Intereſt alſo, which ſpringes from the Legacie, may likewiſe be diſcharged; for, Qui diſtruit medium, diſtruit finem. And therefore if one deviſe to another 20 l. when he comes to the age of 24 yeares, and die, the Legatorie after the age of 21 yeares may releaſe this Legacie and deviſe, and although he afterwards attaine to the age of 24 yeares, he ſhall be barred to recover it; and yet in this caſe a Releaſe of all ſuits and demands ſhall not barre him. Co. l. 10. 51. b. 3. *Lampets* caſe.

An award. 13 A. is bound to B. to ſtand to the award of C. A. before the day of giving up the award diſchargeth C. to make any award; In this caſe, the Bond is forfeit; For how can A. ſtand to the award, when by revoking the Authority, which he had given to C. he hinders C. to make the award, &c. Co. l. 8. 82. *Vivyers* caſe.

Joynt-tenants. 14 If there be two Joynt-tenants in fee, and one grants a rent charge in fee, and after releaſeth to his Companion; In this caſe, albeit he, to whom the Releaſe was made, ſurvive the other; yet ſhall he not avoide the charge; becauſe he which ſurvives, by the acceptance of the Releaſe hath deprived himſelfe of the way and meanes of avoiding the ſaid charge; for, jus accreſcendi, the right of ſurvivour-ſhip was the onely meanes to have avoided it, and the right of ſurvivour-ſhip is utterly taken away by the releaſe. Co. l. b. 79. a. The Lord of *Aburgavenies* caſe.

Dyer 170 b. 1. 1 and 2 El.

15 H. 8. in the 32 yeare of his Reigne demiseth to Sir Richard Cromwell the Forrests of Wayoridge and Sapley in Com. Hunt. with the appurtenances for 80 yeares at the yearely rent of twenty nobles, with this clause, viz. that Sir Richard Cromwell his Executors and Assignes should during the terme maintaine 100 Deere there, and then or the like, should leave there at the end of the terme; Now the Lord North who had the Fee simple of the said Forrests, attempted to take the Deer, and give warrants there, but most of the Judges & Serjeants of both houses were of opinion he could not do it; for all the Game was included in the words and name of the Forrest, and the hundred Deer were not reserved to be killed, or any of them, because then the Lord North would have debarred the Lessee of the meanes of preserving the Game, and (by consequent) of performing his Covenant, the end of preserving them being onely for the maintenance of the Game and Forrests.

Demise of a Forrest.

Dyer 240. 45. 7 El.

16 To build a new house upon the Wast or severall grounds within a Forrest is a Purpresture and Nusance to the Game, and finable at the discretion of the Justices of the Forrest to suffer it to stand, or otherwise they may demolish it at their pleasure: because it is a prejudice to the food of the Deer, for the preservation whereof the Forrest was ordained.

Forest. Nusance.

34 According to the effect.

1 H. 6. 4. Finch 59.

1 A Deed delivered by an Infant, cannot be delivered againe at his full age; for it took some effect before, and was but voidable; But a Deed delivered by a Feme Covert, or a Release delivered to one that hath nothing in the land, may be delivered againe, viz. when she commeth to be sole, or the party to have somewhat in the land: For the first delivery was meerly void, and took no effect at all.

Delivery of a deed.

Co. Inst. pars 1 46 b. 4. Co. l. 5. r. *Clayton's* case.

2 If a lease be made by Indenture bearing date 26 Maii, &c. to hold for 21 years from the date, or from the day of the date, it shall begin on the 27 day of May: but if the Lease beare date the 26 day of May, &c. to hold from the making hereof, or from henceforth, it shall begin on the day in which it was delivered: for the words of the Indenture are not of any effect till the delivery, and thereby, from the making, or from henceforth, take their first effect: So also if the habendum before the terme of 21 yeares without mentioning when it shall begin, it shall begin from the delivery; for there the words take effect: but if it be a die confectionis, then it shall begin on the next day after the delivery. Vide Max. 8. 2.

When a lease shall commence.

Co. Inst. pars 1 48 a. 4. & Ibid. 56. b. 4. *Thoroughgoods* case.

3 If a man deliver a Deed of Feoffment upon the land in name of Seisin of all the lands contained in the Deed, this is a good Livery; but if a man onely deliver the Deed of feoffment upon the land without mentioning that it is in name of Livery, &c. this amounts to no Livery of the land for it hath another operation to take effect as a Deed. Co. l. 6. 6. Sharps case. & l. 9. 137.

Livery of seisin.

Co. ibid. 48. b. 3

Co. l. 3. 35. *Jennings* and *Braggs* case.

4 If a man be disseised, and make a Deed of feoffment, and a Letter of Attorney to enter and take possession; and after to make Livery secundum formam cartæ, this is a good feoffment, albeit he was out of possession at the time of the Charter made; for the Authority given by the Letter of Attorney is executory, and nothing passes by the delivery of the Deed, till Livery of Seisin was made: And in ancient Letters of Attorney power is given to others to take possession for the Feoffor: But if a man be disseised, and make a writing of a Lease for yeares, and deliver the Deed, and after deliver it upon the ground,

Livery of seisin by Attorney.

A void Leaſe. ground, the ſecond delivery is void; for the firſt delivery made it a Deed; and in as much as the Leaſe for yeares muſt take effect by the delivery of the Deed, therefore the Deed delivered when he was out of poſſeſſion was voide: but ſo it is not of a Charter of Feoffment; for that takes effect by the Livery and Seiſin; And in the other caſe if the Lellor had delivered it as a Scrowle to be delivered as his Deed upon the ground, this had been good.

Veſting, &c. as a purchaſer. 5 A man hath iſſue a Sonne and dieth, and the wife dieth alſo; Then lands are letten for life, the remainder to the heires of the wife, the Sonne dieth without iſſue; In this caſe the heires of the part of the Father ſhall inherit, and not the heires of the part of the Mother; becauſe it took effect and veſted in the Sonne as a purchaſer. Co. Inſt. pars 1 13. a. 2.

Acquital of Services. 6 If there be Lord, Feme meſne, and Tenant, and the meſne bind her ſelfe and her heires by her Deed to the acquittal of the Tenant, the meſne takes husband, the Tenant by his Deed granteth to the husband and his heires, that he and his heires ſhall not be bound to acquital, the husband and wife have iſſue and die, this iſſue being bound as heire to his mother, ſhall not take benefit of the ſaid grant of diſcharge, for that extends to the heires of the part of the father, and not to the heires of the part of the mother, and therefore the heirs of the mothers part was bound to the acquital. Co. ibid. 38 E. 3. 12.

Where the Feme ſhall have dower, and where not. 7 If the husband alien his land, and then the wife is attainted of Felony, now is ſhe diſabled, but if ſhe be pardoned before the death of the husband, ſhe ſhall be endowed; So if the Sonne endow his wife at the age of 7 yeares ex aſſenſu patris, if ſhe before the death of her husband attaine to the age of 9 yeares, the Dower is good; for in theſe two caſes the right of Dower tooke effect in the life time of the husband by reaſon of the capacity, which the wives had to take it: But otherwiſe it is of an original abſolute diſability; as if a man take an Alien to wife, and after the husband alien the land, and after ſhe is made Denizen, the husband dieth, ſhe ſhall not be endowed; becauſe her capacity and poſſibility to be endowed came by the Denization; otherwiſe it were if ſhe were naturalized by Act of Parliament; for that makes her as abſolutely capable, as if ſhe were a ſubject borne. Co. ibid. 33. a. 4.

Wardſhip. 8 If the Father convey his lands holden by Knight-ſervice either of the King or of any meane Lord, to his middle Sonne in taile, the remainder to the youngeſt Sonne in Fee, and dieth, the eldeſt being within age, and the King or Lord ſeize the body together with part of the land according to the Statute of 32 and 34 of H. 8. in this caſe if the middle brother die without iſſue, the King or the Lord ſhall not have any benefit of the Statute againſt him in remainder; for the Statute was once ſatisfied, and the Statute extendeth not to him in remainder. Co. l. 2. 93. 94. Binghams caſe; and Northcots caſe. Co. l. 10. 80. b. Loveyes caſe. Co. ibid. 78. a. 3. 14 El. Dy. 308. 3 Mar. Dy. 130.

Tenures in Soccage. 9 When Littleton ſaith, that every Tenure which is not Knight-ſervice is Tenure in Soccage, he there ſpeaketh of Soccage as it is largely taken, and ſo called ab effectu, that is, all Tenures, which hath the like effects and incidents belonging to them, as Soccage hath, are termed Tenures in Soccage, albeit originally ſervice of the Plough was not reſerved; as if originally a Roſe, a paire of gilt Spurs, a Rent, or the like were reſerved, or that the Tenant ſhould hold the lands to be Ultorem ſceleratorum condemnatorum, ut alio ſuſpendio, alios membrorum detruncatione, vel aliis modis juxta quantitatem perpetrati ſceleris puniat, that is, to be a Hangman or Executioner. It ſeemes in ancient times ſuch Offices were not Voluntiers, nor to be hired for lucre, but were to be bound thereunto by Tenure. Co. ibid. 86. a. 3. & 108. b. 2. Littl. § 118. Ockam 31. a. 6.

Co. ibid. 90. a. 3.

10 A Tenant holdeth land of a Biſhop by Knight ſervice, which Seigniory the Biſhop hath in the right of his Biſhopſick, the Tenant dieth, his heir within age, the Biſhop either before or after ſeiſure dieth; neither the King, nor the Succeſſor of the Biſhop ſhall have the Wardſhip, but his Executors, for albeit the Biſhop hath the Seigniory en auter droit, yet the Wardſhip being but a Chattel; he hath it in his own right, and a Chattel cannot go in the ſucceſſion of a Sole Corporation, unleſſe it be in the caſe of the King. Chattel veſted

Littl. § 350. Co. Inſt. pars 1 216. b. 1. & 217. a. 4.

11 If land be granted to a man for terme of five yeares upon Condition, that if he pay to the Grantor within the two firſt yeares 40 marks, that then he ſhall have fee, or otherwiſe but for the terme of five yeares, and Livery of Seiſin is made unto him by force of the Grant; in this caſe the Grantee hath Fee ſimple conditional, &c. and if he do not pay to the Grantor the 40 marks within the firſt two yeares, then immediately after thoſe two yeares paſt, the Fee and Franktenant is and ſhall be adjudged in the Grantor, &c. And the reaſon of this caſe is grounded upon the effect that the Livery toke at firſt: for by the rule of Law a Livery of Seiſin muſt paſſe a preſent Freehold to ſome perſon, and cannot give a Freehold in futuro, as it muſt do in this caſe, if after Livery of Seiſin made, the Freehold and Inheritance ſhould not paſſe preſently, but expect untill the Condition be performed; And therefore if a Leaſe for yeares be made, to begin at Michaelmas, the remainder over to another in fee, if the Leſſor make Livery of Seiſin before Michaelmas, the Livery is voide, becauſe if it ſhould worke at all, it muſt take effect preſently, and cannot expect: And there is a diverſity (in the caſe above put) between a Leaſe for life, and a Leaſe for yeares; for in caſe a Leaſe for life with ſuch a Condition to have Fee, the Fee ſimple paſſeth not before the performance of the Condition, for that the Livery may preſently worke upon the Freehold; but otherwiſe it is in the caſe of a Leaſe for yeares. There is alſo a diverſity between Inheritances, that lie in grant; and Inheritances that lie in Livery; for if a man grant an Advowſon for yeares upon Condition, that if the Grantee pay 5 l. &c. within the terme, that then he ſhall have Fee, the Grantee ſhall not have Fee untill the Condition be performed, & ſic de ſimilibus: But otherwiſe it is, where Livery of Seiſin is requiſite; and therefore if the King make ſuch a Leaſe for yeares upon ſuch a Condition, the Fee ſimple ſhall not paſſe preſently; becauſe in that caſe no Livery is made. Vide 55. 109. & 35. 8. An eſtate upon condition to have fee

Co. ibid. 217. b. 11.

Littl. § 359. Co. ibid. 222. b. 3. & 227. b. 4.

12 If a man make a Deed of Feoffment to another without Condition, and when he gives Livery, he clogs the eſtate with a Condition, in this caſe the eſtate takes effect by the Livery, and not by the Deed of Feoffment, and therefore ſhall be ſubject to the Condition. Livery upon condition.

Co. ibid. 228. a. 1.

13 If a Deed be made and dated in a forraigne Kingdome, of lands within England, yet if Livery and Seiſin be made, Secundum formam cartæ, the land ſhall paſſe; for the land paſſeth, and the grant takes effect by the Livery, and not by the Deed. Livery upon forraigne deed.

Co. ibid. 271. b. 3.

14 There is a diverſity between a Feoffment of land (at this day) upon confidence, or to the intent to perform his laſt Will; and a Feoffment to the uſe of ſuch perſon and perſons, and of ſuch eſtate and eſtates, as he ſhall appoint by his laſt Will: for, in the firſt caſe, the land paſſeth by the Will, and not by the Feoffment, becauſe after the Feoffment the Feoffor was ſeiſed in Fee ſimple as he was before: But, in the latter caſe, the Will purſuing, his power is but a direction of the uſes of the Feoffment, and the eſtates paſſe by execution of the uſes, which were raiſed upon the Feoffment: Howbeit in A feoffment to the uſe of Will.

Co. l. 6. fo. 17. & 18. Sir Edward Clere's caſe.

both

both thoſe caſes, the Feoffees are ſeiſed to the uſe of the Feoffor and his heires in the mean time.

Remainder good though the particular eſtate faile. Co.Inſt.parſ.1. 298.a.2.

15 If the Leſſor diſſeiſe A. Leſſee for life, and make a Leaſe to B. for the life of A. the remainder to C. in fee; here, albeit A. re-enter, and defeat the eſtate for life, yet the remainder to C. being once veſted by good Title ſhall not be avoided: So it is if a Leaſe be made to an Infant for life, the remainder in Fee, the Infant at his full age diſagrees to the eſtate for life, yet is the remainder good; becauſe it was once veſted by good Title. And therefore although it be regularly true, that when the particular eſtate is defeated, the remainder depending thereupon ſhall be alſo defeated; yet that rule failes in theſe and the like caſes: But in both theſe caſes there was a particular eſtate, at the time of the remainder created.

An eſtate ſetled by Attornment. Littl. § 552. Co.ibid.310.a. 3.

16 If the Lord grants the ſervices of his Tenant to a man, and after by a Deed bearing a later date, he grants the ſame Services to another, and the Tenant attornes to the ſecond Grantee; here, the laſt Grantee ſhall have the Services; and albeit afterwards the Tenant will attorne to the firſt Grantee, it is cleerly void, &c.

Deviſe by Tenant in taile not good. Littl. § 624. Co.ibid.334.b. 3.

17 If a man ſeiſed of lands in taile, deviſeth them to another in fee, and die, and the other enter, &c. this is no diſcontinuance, becauſe no diſcontinuance can be made by Tenant in Tail, but ſuch as is made and taketh effect in his life time.

Severance of Joynture. Littl. § 634. Co.ibid.337.a. 3. Co.l.8.43.a.3.

18 If two Joynt-tenants within age make a Feoffment in Fee, and one of them dies, and the other ſurvives, in as much as both the Infants might have jointly entred in their lives, that right ſhall wholly accrue to him that ſurvives, and he ſhall enter into the whole, &c. but in this caſe if one of the Joynt-tenants had made a Feoffment in Fee, and died, the right would not have ſurvived; becauſe the ſeverance of the Joynture took effect in both their lives time. Whittinghams caſe.

Warranty makes a diſcontinuance. Co.ibid.333.a. 3. 9 E.4.19. 12. E.4.11. 21 E. 4.97.

19 In many caſes a Warranty added to a conveyance is ſaid to make a diſcontinuance ab effectu, although he that made the conveyance was never ſeiſed by force of the eſtate taile; becauſe it taketh away the entry of him that right hath, as a diſcontinuance doth: As if Tenant in taile be diſſeiſed and dieth, and the iſſue in taile releaſe to the Diſſeiſor with Warranty; In this caſe the iſſue was never ſeiſed by force of the taile, and yet this hath the effect of a diſcontinuance by reaſon of the Warranty.

Warranty of an infant void. Co.ibid.367.b. 4.

20 If a man of full age and an Infant make a Feoffment in Fee with Warranty, this Warranty is not void in part, and good in part, but it is good for the whole againſt the man of full age, and void againſt the Infant: for, albeit the Feoffment of an Infant paſſing by Livery of Seiſin be voidable, yet his Warranty, which taketh effect onely by Deed, is meerely void.

Judge *Richels* caſe. Littl. §. 720, 721. Co.ibid.378. 28,29 H. 8. 33 a. Dyer. Co.l.1.85.b.4. *Corbets* caſe.

21 Juſtice Richel in the time of R. 2. gave his lands to his eldeſt Sonne, upon Condition that if he ſhould alien them in Fee, &c. that then his eſtate ſhould ceaſe and be void, and that they ſhould remaine to the ſecond Sonne and the heires males of his body, &c. this was a void limitation; becauſe if the eldeſt Sonne ſhould alien the lands in Fee, &c. then is the Frank-tenement and the Fee ſimple in the Alienee, and muſt needs ſettle and take effect in him and none other; and then how can it remaine to the ſecond Sonne, &c. or how can the ſecond Sonne enter upon the Alienee, when he had no right before the Alienation, neither ſince the Alienation could he poſſibly have any?

A fine cannot operate doubly. Co.ibid.378.b. 3.

22 If a man make a Leaſe for life upon Condition, that if the Leſſor grant over the reverſion, that then the Leſſee ſhall have Fee;

here, if the Leſſor grant the reverſion by Fine, the Leſſee ſhall not have Fée; for when the Fine transferreth the Fée to the Conuſée, that eſtate is ſo ſetled, and takes ſuch effect in him, that the ſame Fine cannot worke an eſtate in the Leſſee alſo; for one Alienation cannot veſt an eſtate of one and the ſame land to two ſeveral perſons at one and the ſame time.

Co. l. 2. 23. b. 4. *Balwins* caſe. 23 When things, that lie in grant, and take their eſſence and effect by the delivery of the Déed without other Ceremony, are granted to one and his heires, Habendum for yeares or life; there the Habendum is repugnant and void; as if a man grant rent, Common, &c. out of his land by the premiſſes of the Déed to one and his heires, Habendum for yeares or life, the Habendum is repugnant; for Fee did paſſe by the premiſſes by the delivery of the Déed, and therefore the Habendum for yeares or for life is void: Againe; if one by Déed grant a rent in eſſe, or a Reignion in the premiſſes to one and his heires, Habendum to the Grantee for yeares or for life: here, albeit another Ceremony is requiſite (viz. Attornement) beſides the delivery of the Déed, yet in as much as they are things that lie in grant and all the eſtates viz. in Fée, for yeares, or life, ought to have one and the ſame Ceremony to paſſe them, viz. Attornement; for that cauſe the Habendum is in that caſe alſo adjudged void. 3. when land is given by Déed in Fee by the premiſſes, Habendum to the Leſſee for life, there alſo the Habendum is void; becauſe the ſame Ceremony is requiſite to both the eſtates, and it ſhall be taken moſt forcibly againſt the Feoffor. 4. When to the eſtate limited by the premiſſes a Ceremony is requiſite to the perfection of the eſtate, and to the eſtate limited by the Habendum nothing is requiſite to the perfection and eſſence of it, but onely the delivery of the Deed; In that caſe, although the Habendum be of a leſſe eſtate then is mentioned in the premiſſes, yet the Habendum ſhall ſtand; as if land be given to a man and his heires Habendum for yeares; here to the Fee ſimple limited in the premiſſes it is requiſite to have Livery and Seiſin, and until Livery be had nothing paſſeth but an eſtate at will (if the Deed ſhould go no further) but by the Habendum for yeares, the eſtate takes effect immediately upon the delivery of the Deed, although Livery or Seiſin be never given.

Premiſſes and *Habendum* diverſity.

Co. l. 4. 61. *Forſe* and *Hemblings* caſe, 2 R. 2. Attornment, &c. 24 A Feme Sole makes a Leaſe for life reſerving rent, and after by her Deed grants the Reverſion to another, and after and before Attornement marries with the Grantee; here, this mariage was not a counter-mand of the Attornement, no more than if ſhe had married with any other ſtranger; becauſe, in that caſe, when the Feme by her Déed ſealed and delivered had granted the reverſion to another, that grant took ſuch effect againſt her ſelfe, that ſhe could not by any words, which ſhe could uſe, counter-mand it before or after the taking of the Baron.

Feme Sole Attornements.

Co. l. 4. 70. b. 4. *Hindes* caſe. 25 If a man bargaine and ſell lands to another by Deed indented, and alſo levy a Fine of the ſame lands unto the Bargainee, and after the Deed is inrolled according to the Statute; In this caſe, the Grantee ſhall be in by the Fine, and not by the Deed inrolled; for when the Fee ſimple paſt by the Fine to the Conuſee and his heires, the inrollement of the Deed indented afterwards cannot deveſt and turne the eſtate out of him, which was abſolutely eſtabliſhed in him by the Fine; for then whereas he was in before in the per, he ſhall be now in the poſt, which cannot be; And when the Common Law and Statute Law concurre, the Common Law ſhall be preferred.

Fine and Bargaine and Sale.

Co. l. 4. 89. b. 4. *Druries* caſe. Co. ibid 119. a. *Actons* caſe. 26 When a Counteſſe retaines two Chaplains, thoſe two are each of them capable of a Diſpenſation by force of the Statute of 21 H. 8. cap. 13. but when ſhe hath ſo retained two, the Statute is executed; for

A Counteſſe but two Chaplains.

for the cannot have more than those, capable of a Diſpenſation and the retainer of a third, in the life time of the two firſt, cannot deveſt the capacity of Diſpenſation, which was at firſt veſted in them by their retainer, to make the third capable of a Diſpenſation within the Statute; albeit he ſhould ſurvive both the firſt; becauſe the retainer had an evil commencement to take benefit of the Statute, for although a Counteſſe may have as many Chaplains as ſhe pleaſeth at the Common Law, yet ſhe can not have more than two capable of a Diſpenſation, by force of the Statute.

Preſentee firſt and ſecond in E 6 and Qu. Eliz. and Qu. Maries time.

27 If two have Title to preſent by turne, and the one preſents his Clerke, who is Admitted, Inſtituted, &c. and after is depriued for crime, or hereſie, &c. yet he ſhall not preſent againe, but this ſhall ſerue for his turne; So if he preſent mere laicus, which was Admitted, Inſtituted, &c. although he be declared by ſentence to be incapable, and therefore void ab initio, yet becauſe the Church was full until the ſentence declaratory came, that ſhall ſerue for his turne, becauſe it was but voidable; as in the caſe of Littleton, if the Lord marry his ward within age of conſent, and after he diſagree unto it, and ſo was no marriage ab initio, yet he ſhall not marry him afterwards; So (27 H. 6. Gard 118.) if the Guardian marry his Ward, and after they are diuorced cauſa precontractus, yet he ſhall not have the marriage of him againe: But when the Admiſſion and Inſtitution are meerly void, then without queſtion that ſhall not ſerue for a turne; as if his Preſentee had been Admitted, Inſtituted and Inducted, but had not ſubſcribed to the Articles, &c. according to the Statute 13 El. by which in ſuch caſe the Admiſſion, Inſtitution and Induction are all void, &c. Likewiſe where two were to preſent by turne, and one preſented in E. 6. time his Clerke, who in Queen Maries time was deprived by ſentence, and then the other preſented his Clerke, who in 1 Eliz. was alſo deprived by ſentence, and by the ſame ſentence the firſt Preſentee was reſtored, and after dies; in this caſe the Patron of the ſecond Preſentee ſhall not looſe his turne; For although the ſecond Preſentee was perſon for the time to all purpoſes, and the firſt Preſentee during the firſt deprivation was not Incumbent, yet when the ſecond ſentence came, the firſt Preſentee was Incumbent againe by force of his firſt Preſentation, Admiſſion, &c. and there needed no new Preſentation, &c. and therefore when this firſt Preſentee dies (who was then in courſe the laſt Incumbent) the Patron of the ſecond Preſentee muſt needs preſent in the next turne; but if the firſt Preſentee had died before the ſecond ſentence, or had not reuerſed the firſt ſentence, then the Patron of the laſt Preſentee had enſoyed his turne, and could not have preſented againe.

Co. l. 5. 101. *Winſors* caſe.

23 Eliz. Dyer. Pl. vltimo.

The principal caſe in *Winſors* caſe.

Tender of money, &c.

28 As concerning the tender of money upon a Mortgage, Bond, &c. upon a certaine day therein limited, although the laſt time of payment of the money by force of the Condition be ſuch a conuenient time before ſun-ſet, as that the money may be told before the Sun be ſet, yet if tender be made unto him, that ought to receiue it, at the place ſpecified in the Condition at any time of the day, and he refuſe it, the Condition is ſaued for ever, and the Mortgager or Obliger need not to make tender of it againe at the laſt inſtant of the day, as aforeſaid: for by the expreſſe letter of the Condition the money is to be paid upon the day indefinitely, and the Law aſſignes the laſt inſtant, to the end neither of the parties ſhould loſe their labour in attending the payment, &c.

Co. l. 5. 114. b. 2 *Wades* caſe.

Plea of *non eſt factum* or Judgement ſi Action.

29 In all caſes when a Deed is onely voidable at the time of the Action brought (as for Infancy, Dures, or the like) the Defendant ought to plead Judgement ſi Action, and not, non eſt factum (1 H. 7. 15.)

Co. l. 5. 119. *Whelpdales* caſe.

So

So alſo when the Deed is void by Act of Parliament he ought not to plead non eſt factum, but in conſtruction of Law, the Deed is to be avoided by ſpecial pleading, taking advantage of the Act of Parliament; for albeit the Act ſaith the Obligation or other Writing ſhall be void, yet the Law implicitly requires order, which ought to be purſued by the Obligor, &c. As if an Obligation be made to the Sheriffe againſt the Statute of 23 H. 6. cap. 10. or to one againſt the Statute of Uſury, 13 Eliz. cap. 8. in thoſe and the like caſes the Defendant ought to conclude, Judgement ſi Action and cannot plead non eſt factum (7 E. 4, 5. 7 E. 6. Br. non eſt factum 14.) againſt the opinion of Montague in Dyve and Maninghams caſe in the Commentaries: Againe, when the Obligation or other Writing took at firſt effect, and was once revera his Deed, but afterwards before the Action brought became no Deed, as by raſure, addition, alteration, breaking of the Seal or the like, in theſe caſes albeit it were ſometimes his Deed, yet may the Defendant ſafely plead, non eſt factum; for doubtleſſe, at the time of the plea (which is in the preſent tenures) it was not his Deed. In Dyer 36 H. 8. 59. In debt, the Defendant pleades non eſt factum, and before the day of Apparence of the Inqueſt, the mice had eaten the Label, unto which the Seal was fixed, by the negligence of the Clerke, in whoſe cuſtodie it was kept; whereupon the Juſtices commanded the Jury, that, if they found ꝑ it was his Deed at ꝑ time of ꝑ plea pleaded, they ſhould then give a ſpecial Verdict, which they did accordingly. If an Obligation be delivered to another to the uſe of the Obligee, and the Obligee refuſeth it upon tender, in this caſe the delivery hath loſt its force, and the Obligee can never agree to it afterwards, and then alſo the Obligor may ſafely plead, non eſt factum, againſt the opinion in Dyer, 1 Eliz. 167. So alſo if an Obligation be made to a Feme Covert, and the Baron diſagree to it, the Obligor may plead non eſt factum; for by the refuſal the Obligation loſeth its force, and becomes no Deed. And by theſe reſolutions the Quære in Dyer, 2. Mar. 112. and the diſagreeing opinions in 14 H. 8. 28. Dyve and Maninghams caſe 66. 1 H. 7. 15. Dyer 1 Eliz. 167. and other places are well reconciled.

Pl. com. 66.

Where a Leaſe enures by grant or confirmation.

30 A. Tenant for life the remainder to B. in Fee joyn in a Leaſe to C. this immediately after the delivery takes effect in this manner, it is the Leaſe of A. during his life, and the Confirmation of B. and after the death of A. it is the Leaſe of B. and the Confirmation of A. according to ꝑ opinion of Dyer & Brown, M. 6. and 7 Eliz. 234, 235. and therefore in an Ejectione firma brought by C. if he count of a joynt Demiſe from A. and B. his count is not good. And in that caſe although the Leaſe be by Deed indented, yet ſhall it not worke any concluſion; for when the Deed enures by paſſing of an intereſt (as in this caſe it doth) it ſhall not be taken for any concluſion, no more than a Leaſe for yeares of the Tenant for life by Deed indented ſhall be an Eſtoppel after his death, becauſe at the beginning it took effect by way of paſſing an Intereſt.

Co. l. 6. 15. *Treports* caſe.

Marriage due to the Lord. Chattel veſted.

31 When Tenant by Knight Service dies, his heire within age, preſently the value of his mariage, as a Chattel takes ſuch effect and is ſo veſted in the Lord (24 E. 3. 25. V. N. Br. 27 E. 3.) that albeit ſuch an heire within age be made a Knight, and to that purpoſe in Judgement of Law is eſteemed of the full age of 21 yeares, yet ſhall the Lord have the value of his mariage, as well as the cuſtodie of his land till his age of 21 yeares, which laſt to remove all doubt, was expreſſely given to the Lord by Magna carta cap. 3.

Co. l. 6. 74. a. 3. Sir *Drue Druries* caſe.

The King cannot alter

32 If a King hath a Kingdome by Title of deſcent where the Laws have taken good effect and rooting, in as much as by the Laws of that King-

Co. l. 7. 17. b. 3. *Calvins* caſe.

Lawes without Parliament.

dome he doth inherit it, he cannot change those Lawes of himselfe, without consent of Parliament: So also if a King hath a Christian Kingdome by Conquest, as King H. 2. had Ireland, after King John had given unto them (being under his obedience and subjection) the Lawes of England, for the government of that Country, no succeeding King could alter the same without Parliament.

A Recognisance chargeth a rent after release to the Terre-tenant.

33 The Grantee of a rent charge issuing out of land acknowledgeth a Recognisance, and afterwards releaseth to the Terre-tenant, the Conusee sueth Execution and extends the rent, notwithstanding by the release it is extinguished, for the Recognisance took effect to charge the rent before the extinguishment, and therefore it shall be liable to the extent, in whose hands soever it comes, and as to the Conusee, shall not be extinct. Co. l. 7. 38. b. 3. &c. *Lillingstons* case.

A Chattel vested.

34 If the King hath an Advowson in Fee, which is void, and during the avoidance the King grants away the Advowson in Fee, the King shall not present to this avoidance: But if the King hath an Advowson by reason of the temporalties of a Bishoprick, which is void, and during the avoidance, the King restores to the Bishop the temporalties, yet he shall present to the Advowson, and not the Bishop for this avoidance; because the presentation was a Chattel which vested in him before he restored the temporalties: So if the heire sue Livery from the King, and hath it; yet the King shall present to the Advowson, which voided during the time, that the Advowson and land were in the Kings hand, *caula qua supra*. Likewise if a man be seised of an Advowson in Fee in grosse, or appendant to a Manor, and the Advowson voides, and he dies, his Executors shall have the presentation and not the heire: because it was a Chattel vested and severed from the Manor: neither shall the heire in taile have the presentation which fell in the life of the Tenant in tail, but the Executors of the Tenant in tail, &c. Fitz. 33. N. O. P. a.

The like.

35 The Termor shall have the presentation, which happens during the terme, albeit during the terme he present not to the Advowson: So if a Vicarage happen to be void, and before the Parson can present he is made a Bishop, &c. yet he shall present to that Vicarage, because it was a Chattel vested in him. Fitz. 34. b. & N.

Where the Guardian shall not have a ravishment.

36 If the Guardian marry the heire after the age of 14 yeares, and after the heire is taken by a stranger, yet the Guardian shall not have a Writ of Ravishment, because he hath had the effect of his marriage. Fitz. 142. h.

A Chattel vested.

37 If a man be Guardian in right of his Wife, although his Wife die, yet he shall have the Wardship, because it is a Chattel vested in him. Fitz. 142. i.

Feoffee upon condition not disabled.

38 If the Feoffee upon Condition be disseised, and after bind himselfe in a Statute Staple, or Merchant, or in a Recognisance, or take wife, this is no disability in him of performing the Condition; for that, during the disseisin, the land is not charged therewith, neither is the land in the hands of the Disseisor liable thereunto: because, in that case, if the wife die, or the Conusee release the Statute or Recognisance, and after the Disseisee doth enter, he may performe the Condition in the same plight and freedome, as when the land was conveyed unto him. Co. Inst. pars 1. 222. a. 3.

Acceptance cannot make a void Lease good.

39 Where an Estate or Lease is ipso facto void by a Condition or Limitation, no acceptance of the rent after can make it to have a continuance: Otherwise it is of an Estate or Lease voidable by entry. Co. ibid. 215. b. 1.

35. He that cannot have or performe the effect or conſequence of a thing, ſhall not have the thing it ſelfe.

Co. Inſt. pars 1 16.b.1.

1 If a man be called by Writ to the Parliament, and the Writ is delivered unto him, and he ſit in Parliament by force of that Writ, he is for ever after a Baron or Peer of the Parliament, and thereby his bloud is ennobled to him and his lineal heires; but if he die before he ſits in Parliament, he is no Baron or Peer neither ſhall he or his reap any benefit of the Writ; becauſe (being prevented by death) he cannot performe the effect or conſequence of the Writ, which is, perſonaliter intereſſe cum Rege & cum Prelatis, magnatibus, &c. Super arduis & urgentibus negotiis &c. conſilium ſuum impenſurum, &c. No Peer unleſſe he ſit.

Co. ibid. 8.b.1. Bract. l. 2. fo. 88. Fleta l. 1. cap. 10.

2 An Infant within age, that is not in cuſtody of another, cannot be Guardian in Soccage; becauſe no Writ of account can lie againſt an Infant. For, as Bracton ſaith, Alium regere non poteſt, qui ſeipſum regere non novit: Or as Fleta, Minor minorem cuſtodire non debet, alios enim preſumiter male regere, qui ſeipſū regere neſcit: And by the like reaſon, An man non compos mentis, a Lunatick, a man cæcus & mutus, or ſurdus & mutus, or a Leper removed by a Writ de leproſo amovendo cannot be Guardian in Soccage. An Infant &c. cannot be Guardian.

Co. ibid. 87. a. 1.

3 A Guardian in Soccage ſhall not preſent to a Benefice in the right of the heire; becauſe he cannot be accomptable therefore, for that he can make no benefit thereof; for the Law doth abhor Simony, or any corrupt contract for Benefices; And therefore in that caſe the heire ſhall preſent himſelfe. A Guardian cannot preſent to a Benefice.

Co. ibid. 100. a. 4.

4 If two Joyn-tenants bring a Writ of Peſne, and the one is ſummoned and severed, the other cannot fore-judge the Peſne; for he ought to be attendant to the Lord Paramount, as the Peſne was, and that can he not be alone without his companion: So it is alſo if there be two Joyn-tenants Peſnes, and in a Writ of Peſne brought againſt them, one maketh default, and the other appeares, there can be no fore-judger. One Joyn-tenant cannot forejudge.

Co. ibid. 101. a. 3.

5 If Tenant in Frank-almoigne bring a Writ of Peſne againſt his Lord, the Lord cannot diſclaime in the Seigniory; becauſe he cannot hold of any man in Frank-almoigne, but of the Donor and his heirs. No Diſclaimer in Frankalmoigne.

Littl. §. 194. Co. ibid. 126. a. 4.

6 If the Lord mayhim his Villaine, he ſhall be indicted for it at the Kings ſuit: but he ſhall not have an Appeal of mayhim againſt his Lord, becauſe he cannot in that caſe enjoy the damages recovered; for that upon recovery and execution for the damages, the Lord may immediately take them from him againe. Vide infra 38. 1. No appeale by Lord againſt his Villaine.

Co. ibid. 139. a. 4.

7 In a Quid juris clamat brought by two Executors, the non-ſuit of the one is the non-ſuit of both; becauſe the Tenant cannot attorne according to the grant. Non-ſuit of one executor is of both.

Co. ibid. 218. a. 3, & 4.

8 Regularly when any man will take advantage of a Condition, if he may enter he muſt enter, and when he cannot enter he muſt make a claime; And his claime is to proceed and as it were to make way for his entry: And the reaſon of this is, becauſe a Freehold and Inheritance ſhall not ceaſe without entry or claime: yet in ſome caſes, when he cannot enter by reaſon of ſome preſent intereſt, which the Tenant hath in the land, neither ſhall he then make his claime, becauſe he cannot enjoy the effect of his claime, viz. to enter into the land: As in the caſe of Littleton Sect. 350. If land be granted to a man for 5 yeares upon Condition, that if he pay unto the Grantor within two yeares 40 marks, that then he ſhall have Fee, or otherwiſe but for the terme of 5 yeares, if in this caſe the Grantee do not In ſome caſes neither entry nor claime neceſſary.

not pay unto the Grantor the 40 marks within the first two yeaes, then immediately after those two yeares past, the Fee and Frank-tenement is in the Grantor without entry or claime, &c. Vide 34. 11. and 55. 109.

Diversity of Ejectione and Assise.

9 If an Ejectione firma be brought, and the terme incurreth hanging the Action, yet the Action shall proceed for damages onely, because an Ejectione doth lie after the terme for damages onely; but if Tenant pur auter vie, bring an Assise, and Cesty que vie dieth, hanging the Writ, albeit the Writ were well commenced, yet the Writ shall abate; because he cannot have the effect of a recovery in an Assise, which is to have as well the Land as the Damages, and not Damages onely, as in the case of an Ejectione firma. Co. ibid 285. a. 3.

No writ of Error after release.

10 If Tenant in a real Action release unto the Demandant after recovery, all his right in the land, he shall not afterwards have a Writ of Error; because he cannot have the effect of that Writ, which is to be restored to the land. Co. ibid. 289. a. 1. 9 H. 6. 47.

No attaint after release.

11 If Debt or Damages be recovered in a personal Action by false verdict, and the Defendant releaseth unto the Plaintife all Actions personal, the Defendant shall not afterwards take any benefit by bringing a Writ of Attaint; because he cannot have the effect of that Writ, which is to be restored to the Debt and Damages, which he lost: The like Law is, where a Judgement is given upon a false verdict in a real Action; for there also a release of all Actions real, is a good barre in an Attaint, &c. for that (in these two last examples) both the Writ of Error, and the Writ of Attaint do insue the nature of the former Action, &c. Co. ibid. 26 H. 8. 3. b. 13 E. 4. 1, 2.

No Audita querela after release.

12 If the Defendant in a personal Action doth after Judgement entred release unto the Plaintife all Actions personal, he shall not afterwards bring an Audita querela; because after he hath released to the Plaintife all Actions personal, he cannot have the effect of that Writ, which is to discharge himselfe of a personal execution. Co. ibid.

No Formedon against tenant for life.

13 Tenant in taile discontinueth in Fee and dieth; the Discontinuee makes a Lease for life, and granteth the reversion to the issue; In this case, the issue shall not have a Formedon against Tenant for life, because, he cannot have the effect of that Writ, which is to recover an estate of Inheritance; for the Lessee for life hath not the Inheritance, but the issue in taile himselfe hath it. Co. ibid. 297. b. 3.

No entry after release.

14 If Feoffée upon condition make a Lease for life or a gift in taile, and the Feoffor release the Condition to the Feoffée, the Feoffor shall not afterwards enter upon the Lessee or Donee; because he cannot have the effect of his entry, which is to regaine his ancient estate. Co. ibid.

No action of trespasse for spoile by Conies.

15 If a man plant Conies and Conie-burrowes in his own land, which afterwards so increase and multiply, that they destroy the ground of his neighbour thereunto adjoyning, yet shall not his neighbour maintaine an Action upon the case against him that plants them, for the damage done by them; because he cannot have the effect of his suit, which is to recover damages for the trespasse committed; for immediately after the Conies come into the neighbours land, he may kill them; because they being feræ naturæ, the other that planted them hath then no property in them, and it stands not with reason, that a man should make satisfaction for the damage which goods do, that are none of his. Co. l. 9. 104. *Boulstones* case.

To some titles no warranty extends.

16 There are some naked titles, unto which warranty doth not extend, as ꝑ Title in case of exchange, condition upon Mortgage, &c. Mortmaine, consent to the Ravishor, and the like; because for these no Action lies, in which there may be Voucher or Rebater. Co. l. 10. 98. b. 4. *Edward Seymors* case. Co. Inst. pars 1. 389. a. 5.

Co. l. 11. 29. b. 3. *Alexander Powlters* caſe. Ibid. fo. 30. a. 3.

17 Before the Statute of Articuli cleri cap. 15. he that confeſſed the Felony could not have the benefit of his Clergy; becauſe in caſe of confeſſion he could not have his purgation, &c. for by intendment of Law he cannot (againſt his expreſſe and voluntary confeſſion in Court) be innocent: Confeſſus in judicio pro judicato habetur, & quodammodo ſua ſententia damnatur. No Clergie after confeſſion.

Co. l. 11. 77. b. 1. *Magdalen* Colledge caſe. 22 E. 3. Tit. *Corone* 276.

18 It is provided by the Statute of Weſt. 2. cap. 12. Quòd ſe appellatus de felonia, &c. ſe acquietaverit, &c. reſtituant hujuſmodi appellatores damna appellatis. Yet if an appeal of death hath been brought againſt a Monk, who hath been acquit, and thereupon hath prayed his damages according to that Act, he ſhould not have been admitted any ſuch prayer; becauſe he could not have the effect thereof, being by Law incapable to take the damages. In appeal a Monke cannot have damages.

Fol. 13. B. 9. N.

19 In a Writ of Right de rationabili parte by one Copartener againſt another Voucher lieth not; becauſe the Demandant cannot have the effect thereof, viz. to recover in value, in reſpect of the privity of bloud betwixt them, &c. Voucher lieth not in copartenery.

F.N.B. 32. f. Co. Inſt. pars 1. 127. a. 1.

20 In all originalls brought by a Subject, wherein pledges de proſequendo are to be found, the preamble of the Writ is, Rex vicecom. ſalutem, &c. Si A. fecerit te ſecurum, &c. tunc ſummoneas, &c. But at the Kings ſuit the preamble ſhall be, Rex vicecom. ſalutem, &c. ſummonens per bonos ſummum, &c. and not, Si Rex fecerit, &c. for the King ſhall not be bound to proſecute; becauſe he is not ſubject to the conſequence thereof, viz. to be amerced if he do not proſecute; neither can he be non-ſuited; becauſe he is alwayes preſent in all his Courts. V. infr. 39. 4. The King ſhall not give pledges *de proſequendo*.

F. N.B. 48. q.

21 If a man brings a Writ of Right of Advowſon againſt another, and hanging the Writ, the Church becomes void, the Plaintiff ſhall not have a ne admittas, to the Biſhop; nor a Quare incumbravit, albeit the Biſhop doth encumber the Church, &c. for the Demandant ſhall not recover the preſentment upon this Writ, but the Advowſon. The Demandant ſhall not have a *ne admittas*.

F.N.B. 125. d

22 One Commoner ſhall not bring a Writ de admenſuratione paſturæ againſt another Commoner, which hath Common appurtenant, or in groſſe ſans number; becauſe ſuch a Commoner cannot be admenſured, &c. No Writ of admeaſurement.

Pl. Co. 110. a. 1. *Fulmerſton* and *Stewards* caſe. Weſt. 2. cap. 21.

23 The Statute of Weſtm. 2. ordaines, Quòd fiant brevia de ingreſſu hæredi petentis, ſuper hæredem tenentis, & ſuper eos, quibus alienata fuerint hujuſmodi tenementa, &c. yet if the Demandant in a Ceſſavit die, the heire ſhall not have a Ceſſavit; becauſe he cannot have the effect thereof, viz. to recover the arrerages; for that they (by Law) belong not unto him, but unto the Executor. No *Ceſſavit* for the heire.

Co. Inſt. pars 1. 96. b. Littl. § 137.

24 If a Tenant in Frankalmoigne with-draw his ſervice, the Lord ſhall not diſtraine, commence any ſuit, or ſeek any remedy for it, in foro ſeculari, in any Temporal Court; becauſe that ſervice, being Spiritual and uncertaine, ſhall be defined and recovered in foro Eccleſiaſtico, in the Spiritual Court: It is otherwiſe of Tenure by Diſcine ſervice, which, although it be Spiritual, yet being certaine, ſhall be recovered in foro ſeculari, and the performance or non-performance thereof ſhall (upon a diſtreſſe and Avowry) be tried by a Jury of 12 men, &c. Tenant in Frankalmoigne not diſtrainable.

Co. Inſt. pars 1. 46. a. 2.

25 The Termor for yeares (before the Statutes of Glocester 6 E. 1. cap. 11. and 21 H. 8. cap. 15.) was not able by the Common Law to ſuſtain a covenous recovery of the Freehold; becauſe he could not have the thing, that was recovered, viz. the Freehold. The Termor could not falſifie.

Co. l. 8. 118. a. 3.

26 The Statute of Weſtm. 2. cap. 21. gives a Writ of Ceſſavit hæredi petenti ſuper hæredem tenementum, & ſuper eos, quibus alienatum fuerit *Ceſſavit*.

hujuſ-

hujusmodi tenementum: yet in 33 E. 3. Tit. Cessavit 42, where there were two Coparceners Lords, and Tenant by Fealty and certaine rent, the one Coparcener hath issue and dies, in this case the Aunt and Neice could not joyn in a Cessavit, because the Neice (though heire to her mother) could not (in this case) have a Cessavit, in regard she could not have the effect of it, viz. the recovery of the arrearages accrued in her mothers time, for that they did not belong unto her, but unto her mothers Executor, &c. in Doct. *Bonhams* case.

Divorce. 27 Causa frigiditatis naturalis & perpetuæ, is held a sufficient ground of divorce; whereupon such a Sentence was given, H. 2. Eliz. in the Court of Audience betwixt Sabel and his wife at the suit of the wife: And such another about the same time, betwixt Bury and his wife at the suit also of the wife: who after wards married Cary and had issue, Bury also married another woman and had issue, and therefore the Doctors of the Civil Law would have had them co-habit againe together, because (as they said) Sancta Ecclesia decepta fuit in priori judicio. Dyer 178. 40. 2. Eliz.

36 *Non officit conatus, nisi sequatur effectus.*

Inheritances depend not upon uncertaine words. 1 In Sir Anthony Mildmayes case in the 6 Report (which was a resolution against perpetuities) it was resolved, that these words (Attempt, &c.) or (goe about, &c.) or, (enter into communication, &c.) are words uncertain and void, and God defend, that Inheritances and Estates should depend upon such incertainties; for it is true, Quòd misera est servitus, ubi jus est vagum, & quòd non definitur in jure, quid sit conatus, nec quid sit, a going about or communication: And the Rule of Law verifies this point, Non officit conatus, nisi sequatur effectus. Co. l. 6. 42. a. 3. Sir *Anthony Mildmayes* case.

Resistance must be by some overt act. 2 If the Testator devise lands to I. S. for 60 yeares; if he shall so long live, provided if I. S. molest or hinder the Executor, so that he cannot take and enjoy the goods of the Testator, that then his estate shall cease; In this case a bare denial by Parol is not a breach of the Proviso, but there ought to be some act done; as after request made by the Executor, to shut the door against him, or to put his hands upon him, and to resist him, or the like, so that by reason of some such open act he doth not permit the Executor to carry away the goods according to the Proviso. And Cook, Chief Justice said, that in this case, it is not sufficient to say, Quòd prædictus Johannes non præmisit prædict. execut. &c. quietè habere, removere & capere prædict. bona, or quòd prædict. Johannes impedivit illum, &c. but he ought to alleadge a special breach by reason of some special disturbance or interruption in that case by some overt act, unto which the other party may make a certaine answer, and upon which a certaine issue may be taken, whereof the Jury may inquire, and the Court may judge, whether it were a sufficient breach of the Proviso or not. Co. l. 8. 91. a. 4. *Frances* case.

Cause of disfranchisement cannot be without some overt act. 3. Sir James Bagge being a Capital Burgesse of the Town of Plimouth behaved himselfe contemptuously towards the Major there, and said unto him, You are a cosening knave, come kisse mine, &c. and perswaded A. and B. Mariners, that they should not pay Mine-waight, &c. whereupon the Major removed him; but upon complaint in the Kings Bench, a Writ of Restitution was awarded to restore him; upon this ground (principally) for that the cause of a disfranchisement in this case ought to be founded upon some act, which he shall do against the duty of a Citizen or Burgesse, and to the prejudice of the Common-Wealth of the City or Burrough, whereof he is Citizen or Burgesse, and against his oath which he took, when he was made freeman there; but words of contempt, or contra bonos mores, albeit they be against the chiefe Officers, and his brethren, may be good causes to Co. l. 11. 98. a. 3. Sir *James Baggs* case.

puniſh him, and to commit him, till he put in ſureties for the good behaviour, but not to diſfranchiſe him: So likewiſe, if he intend or endeavour of himſelfe, or conſpire with others to do any thing againſt the duty & truſt of his freedom, and to the prejudice of ỹ Common-wealth of the City or Burrough, &c. but putteth it not in execution, this may be good cauſe to puniſh him, as aforeſaid; but not to diſfranchiſe him: For, Non officit conatus niſi ſequatur effectus, & Non officit affectus, niſi ſequatur effectus. And the reaſon of this is, becauſe when a man is a Free-man of a City or Burrough, he hath Franktenement in his freedome for his life, and together with others (in their politique capacity) hath inheritance in the lands of the Corporation, & intereſt alſo in their goods, and peradventure it may concern his trade and meanes of life, and his credit and eſtimation; And therefore the matter, which ſhall be cauſe of his diſfranchiſement, ought to be ſome act or deed done, and not a bare indeavour or enterprize, whereof he may repent before the execution of it, and whereupon no prejudice doth enſue.

Co. ibid. b. 3. 4 Thoſe which have offices of truſt and confidence, ſhall not forfeit them by bare endeavours or intentions of doing acts, although they declare them by expreſſe words, except the Act it ſelfe be put in execution; As if the keeper of a Park ſhall ſay, I will kill all the Game within my cuſtodie, or, I will cut downe ſo many trees within the Park, &c. but in the mean time kills none of the Game, nor fells any of the trees, this is no forfeiture, &c. Forfeiture of a Parke cannot be without ſome overt act.

Co. ibid. b. 4. 5 If a Biſhop, Arch-deacon, Parſon, &c. cut downe all the trees, &c. this is a good cauſe of deprivation, and with this accords 2 H. 4. 3. So if a Prior alien the land, which he hath in jure domus ſuæ, this is a cauſe of deprivation, as it appears, 9 E. 4. 34. So likewiſe if a Prior ſuffer dilapidations, that is a ſufficient cauſe to deprive him, as it was holden 29 E. 3. 16. 20 H. 6. 36. Nevertheleſſe if in theſe or the like caſes there be but an endeavour or enterprize without doing any ſuch act, there can be no cauſe of deprivation; for in ſuch caſes, Voluntas non reputatur pro facto. Deprivation cannot be without ſome overt act.

37 *Acta exteriora indicant interiora Secreta.*

Co. Inſt. pars 1. 257. b. 1. 10 H. 7. 12. 1 One may commit a forcible entry in reſpect of the armour or weapons, which he hath, that are not uſually born, or if he do uſe violence and threats to the terrour of another: And if three or four go to make a forcible entry, albeit one alone uſe the violence, all are guilty of force: So alſo if the Baſſer cometh with a greater number of ſervants, then uſually attend on him, it is a forcible entry. Forcible entry what, and when.

Co. l. 8. 146. a. 4. The ſix Carpenters caſe. 2 When entry, authority, or licence is given to any by the Law, and he miſuſeth it, he ſhall be a treſpaſſer ab initio; but where entry, authority, or licence is given by the party, and he miſuſeth it, there he ſhall be puniſhed for the miſdeed; but ſhall not be a treſpaſſer ab initio: And the reaſon of this diverſity is, becauſe in caſe of generall authority, or licence given by the Law, the Law judgeth by the act ſubſequent, quo animo, or to what intent he entred; for, Acta exteriora, &c. but when the party gives authority or licence himſelfe to do any thing, he can for no cauſe ſubſequent puniſh that, which is done by his owne licence and authority: And therefore when as the Law gives authority to enter into an Inne or Tavern, to the Lord to diſtraine, to the owner of the ſoile to diſtrain damage feſant, to the Reverſioner, to ſee whether waſt be committed, to the Commoner to enter into the land to ſee his Cattell or the like (vide 12 E. 4. 8. b. 21 E. 4. 19. b. 5 H. 7. 11. 9 H. 6. 29. b. 11 H. 4. 75. b. 3 H. 7. 15. 28 H. 6. 5.) There, if he that enters into the Inne or Taverne commit treſpaſſe, as if he cary any thing away from thence; or if the Lord, that diſtraines for rent, or the owner for damage feſant Upon entry by Law, if treſpaſſe be committed, he is a treſpaſſer *ab initio*.

ſeſant weary, or kill the diſtreſſe, or if hee that enters to view the waſte, do hurt to the houſes, or ſtays there all night, or if the Commoner cut down a tree, &c. In theſe and the like caſes the Law will adjudge, that he entred for that purpoſe; and therefore in as much as the Overt act, which he doth, is a treſpaſſe, he ſhall be adjudged a treſpaſſer ab initio, as it appears in all the aforeſaid Books.

A purveyor a treſpaſſer. 3 If a Purveyor take my Cattle for the Kings houſhold by force of his Commiſſion, that is lawfull; but if he ſell them in the Market, then is the firſt taking of them forcious, and with this accords, 18 H. 6. 19. b. Co. ibid. b. 3.

The uſe of a fayrety may be declaimed afterwards. 4 In many caſes an Act ſubſequent ſhall declare the intention of a generall Act precedent, as Peter Vavaſor, octabis Hill. ſuffers a recovery, and by indenture made 15 of February, between him and the recoverors limits the uſes and dies, Dowman and his wife, the daughter and heire of Peter, &c. brings an Aſſiſe againſt him, unto whom the uſe was limited, but could not recover, becauſe the ſubſequent Indenture did ſufficiently declare the intention of the parties at the time of the precedent recovery: So if Tenant in tatle hath iſſue two daughters, and die, and the eldeſt enter into the whole, and after thereof make feoffment with warranty, this is lineall warranty for the one moity, and collaterall for the other; for the feoffment ſubſequent doth declare the intention of the generall entry, viz. that it was onely for her ſelfe, or otherwiſe it would be warranty; which ſhould begin by diſſeiſin for the one moity; and with this agrees Littleton, cap. Garr. fol. 160. If the Lord come upon the tenancy, and take and drive away an ore, if he impound him, the taking of him ſhall be adjudged as for a diſtreſſe, but if he kill him, that ſubſequent act declareth what his intention was ab initio, and ſo ſhall he be deemed a treſpaſſer, &c. as aforeſaid, and with this agrees 12 Ed. 4. 8. b. 28 H. 6. 5, &c. Co. l. 9. 11. a. 3 *Downis* caſe.

A diſtreſs ſold makes it a treſpaſſe.

Lord, Meſne, and Tenant diſtreſſe. 5 If there be Lord, Peſne, and Tenant, and the Peſne payes his rents and doth his ſervices due to the Lord, and yet the Lord will diſtrain the Tenant pernaſl, and put his cattle into the pound for them; In this caſe the Peſne at the Tenants inſtance ought to take out his cattle, and to put his own into the pound; and then if the Lord will not ſuffer the Peſne ſo to do, the Lord ſhall be deemed a treſpaſſer ab initio; for the Lord doth not then uſe the cattle in the nature of a diſtreſſe, &c. and with this accords 13 E. 4. 6. Co. l. 9. 22. b. 3. The caſe of Avowrie.

Intention may be adjudged murder. 6 Roper the father of Agnes, the wife of Gore, in love to his ſonne in law Gore, being ſicke, procured an Electuary of one Martin an Apothecary by the advice of Doctor Grey, into which Agnes did ſecretly put Ratſ-bane, with purpoſe to poyſon her husband, and May 18 gives part thereof to her husband, who thereupon became very ſicke, Roper alſo eate thereof, and likewiſe became very ſicke; and laſt of all, Martin being taxed for it, ſtirs it and eates it, May 21. and May 22 dies: This was adjudged murder in Agnes, albeit ſhe intended nothing againſt Martin, and that peradventure the ſtirring of it by Martin might make it have more force to kill him: For, in this caſe the Law joyns the murderous intention of Agnes in putting the poyſon into the Electuary to kill her husband, with the event, which enſued thereupon, viz. the death of Martin; for the putting of the poyſon into the Electuary is the cauſe, and the death of Martin is the event, Quia eventus eſt, qui ex cauſa ſequitur, & dicuntur eventus, quia ex cauſis eveniunt: And the ſtirring of the Electuary by Martin without the putting of the poyſon therein by Agnes, would not have cauſed his death. Co. l. 9. 81. b. 3. *Agnes Gorti* caſe.

A delivery to the party without words. 7 An actual delivery of a writting ſealed to the party himſelfe, without any words at all, is a good delivery: For, in traditionibus ſcriptorum non quod dictum eſt, ſed quod geſtum eſt, inſpicitur: It is otherwiſe when it is delivered to a ſtranger. Co. l. 9. 136. b. 4. *Thoroughgoods* caſe.

Dyer, 98.b.56. 1 Mar. 8 If two or more conspire to commit treason, as to levie war, or the like, and some of them afterwards put it in execution, this is Treason in all; and so it was at the Common Law, before the Statute of 25 Edw. 3. Treason.

Dyer 192. 16. 2, 3, Eliz. 9 A. causeth an Obligation to be written, and sealed it, which writing was to the use and behoof of B. whom he intended to marry, and upon the day of Marriage and before it, he delivers the writing to B. saying these words, This will serve, and B. presently delivers it over to the Obligee then present; This was adjudged a good Obligation; for Acta exteriora, &c. Delivery of a Bond.

Dyer 254. 30. 5 Eliz. 10 An offence shall not be adjudged Robbery, unless the Thiefe doth not only take some-what from the person, but likewise put him in fears of death; and therefore in 5 Eliz. where a thiefe toke 40 s. from the person of another in the high way, without putting him in feare of death, it was adjudged only bare felony, for which he had his Clergy, for by not putting him in such feare, the Court adjudged it no more: Howbeit, by the Statute of 8 Eliz. 4. Clergy is taken away from such an offender; yet that Statute being an act of Continuance, and the long Parl. being suddenly broken up, it hath been doubted, whether or no that act and all other acts of Continuance were expired for want of further continuance; but by an Act made in 17 Car. for the further reliefe of his Majesties Armie in the Northern parts, that Act and all other Acts of continuance are to continue in force, untill some further Act of Parliament be made for the continuance or discontinuance of the same. Robbery.

38 *Inutilis labor & sine fructu, non est effectus Legis, & contra*: And therefore nothing can be given to a man, which he had before.

Littl. § 194. Co. Inst. pars 1. 126. a. 4. & 127. b. 1. 1 If the Lord mayhem his Villain, he shall be indicted for it at the Kings suit; but in that case he shall not have an appeale of Mayhem against his Lord, because he cannot enjoy the damages recovered in that suit; for that upon recovery and execution for the damages, the Lord may immediately take them from him again. Vide supra 35.6. The appeal by a Villaine against his Lord.

Co. ibid. 132. b. 2 In an action brought by a man or a woman, that are professed in Religion in Normandy, or any other Forreign Country, the Defendant shall not plead in disability of their person; because that profession will want tryall here in England: It is otherwise if they were professed in England, for that might be tryed by the Certificate of the Ordinary. Forreign profession not pleadable.

Co. ibid. 376. a. 3. 3 If a man enfeoffeth another of an acre of ground with warranty, & hath issue two sons, & dieth seised of another acre of land of the nature of Borough English, and the feoffee is impleaded; Here, albeit the warranty descendeth onely upon the eldest son, yet may he vouch them both, the one is heire to the warranty, and the other as heire to the land; For, if he should vouch the eldest sonne only, then should he not have the fruit of his warranty, viz. a recovery in value, and the youngest sonne only he cannot vouch, because he is not heire at the Common Law, upon whom the warranty descendeth. The heire and youngest son vouched together.

Co. ibid. 303. a. 4. 4 Counts and such as be in nature of Counts (as an Avowry, wherein the Defendant is an Actor) need not to be averred; but all other pleas in the affirmative ought to be averred, thus, Et hoc parat. est verificare, &c. Howbeit pleas meerly in the negative ought not to be averred, because it were in vaine to aver them, in regard they cannot be proved. Negative pleas not to be averred.

The iſſue after diſcontinuance cannot enter.

5 If Tenant in tailе releaſe to his Diſſeiſor, and binde himſelfe and his heirs to warranty, and die, and this warranty deſcends upon the iſſue, this worke a diſcontinuance, ſo that the heire cannot enter, but is put to his action; for if the iſſue in tailе might enter, the warranty (which is ſo much favoured in Law) would ſerve for no purpoſe, but would be utterly deſtroyed; whereas being put to his action, the Diſſeiſor may make uſe of his warranty by vouching the iſſue, and ſhall thereupon recover in value, if other lands deſcended unto him in fee-ſimple, &c. Vide 15. 9. Co. ibid. 328. a. 4.

It is vaine to give a man what he had before.

6 It is a vaine thing to give that to a man, which he had before, becauſe nothing can operate thereupon: As if land be given in tailе, ſaving the reverſion to the Donor, and after the Tenant in tailе by his deed infeoffs the Donor in fee; this is no diſcontinuance of the eſtate tailе; becauſe the reverſion is not diſcontinued, but remains in the Donor as it was before: So if Tenant for life make a leaſe for his owne life to the Leſſor, the remainder to the Leſſor and a Stranger in fee; In this caſe, foraſmuch as the limitation of the fee ſhould worke the wrong, it enureth to the Leſſor as a ſurrender for the one moity, and a forfeiture, as to the remainder of the ſtranger; for, he cannot give to the Leſſor that which he had before, &c. So likewiſe, if there be two Joyntenants, and one of them enfeoffe his companion and a ſtranger, and make livery to the ſtranger, this ſhall veſt onely in the ſtranger, becauſe the livery cannot enure to his companion, who was before poſſeſt of the land, per my, & per tout, &c. Littl. §. 625. Co. ibid. 335. a. 2.

Remainder granted for the life of the Tenant in tail void.

7 If there be Tenant in tailе, remainder in tailе, and the remainder in tailе bargains and ſells the land, and all his eſtate, &c. by Indenture inrolled, &c. to I. S. to have for the life of the Tenant in tailе, and to his heirs males, the remainder to the Queen, &c. Here the remainder to the Queen is voyd, becauſe the Grantee for the life of the Tenant in tailе takes nothing; for the Grantee ſhall never have any benefit thereby: And the remainder to the Qu: ought to take effect when the particular eſtate ends; but that having no beginning can neither have ending Quod non habet principium nec habet finem: And Vana eſt illa potentia, quæ nunquam venit in actum. Co. lib. 2. 51. a. 3. Sir *Hugh Cholmleys* caſe.

Wardſhip of uſe.

8 In a writ of Ward the caſe was this; before the Stat. of 27 H. 8. a man enfeoffs I. S. of Knight-ſervice land to the uſe of the Feoffor and his heirs, after I. S. enfeoffs I. N. to the uſe of the Feoffor and his wife and the heirs of the Feoffor, the Feoffor dies (living the wife) having a ſonne within age: In this caſe, the ſonne ſhall be in Ward in the life of the Feme by the Stat. of 4 H. 7. as heire of Ceſtuy que uſe, becauſe the ancient uſe both ſtill remain in the ſonne, notwithſtanding it be in ſome ſort altered in reſpect of the Feme; for by the laſt feoffment, the ſonne had no more conferred upon him then he had before, ſo as (notwithſtanding the laſt Feoffment) there was ſtill a reverſion of uſe in the ſonne, and not a new remainder; becauſe a thing cannot be given to a man, which he hath already. Vide plus ibidem vers fine. So Ceſtuy que uſe of two acres, one holden by priority, the other by poſteriority, makes a Feoffment of both to his own uſe, this makes no equality of tenure, becauſe the ancient uſe which he had before, ſtill remains; The Lord Roſſes caſe. Dyer 12. 28 H. 8. 54. &c.

Recovery. Poſſeſſion.

9 If one recover againſt me by a common recovery, and after I infeoffe the recoveror, he ſhall be ſtill ſeiſed to my uſe; for he ſhall be adjudged in by the recovery, and not by the Feoffment. Dyer 18. 105. 28 H. 8.

39 *Lex non Præcipit inutilia* : Vide *M.* 177. 5.

Co. Inſt. pars 1. 389. b. 3. Litt. § 743.

1 If Tenant in taile enfeoffe his Uncle in fée, who aliens to a ſtranger with warranty, to hold to him and his heires, or to him his heires and aſſignes, and the Uncle afterwards takes again an eſtate of the land in fée; in this caſe the warranty is deſtroyed, becauſe it were needleſſe for the Uncle to warrant the land to himſelfe, and the Law will not command or ſuffer things that are in themſelves uſeleſſe and unprofitable. Warranty deſtroyed.

Co. l. 5 89. a. 4. *Froſts* caſe.

2 When a man is in the cuſtodie of the Sheriffe by proceſs of Law, and after another Writ is delivered unto him to take the bodie of him that is ſo in his cuſtodie, he is immediately (by judgement of Law) in his cuſtody by force of the ſecond Writ, albeit he make no actuall arreſt of him; for to what purpoſe ſhould he arreſt him, when he is already in his cuſtodie? Et lex non præcipit inutilia, quia inutilis labor ſtultus, &c. A priſoner in cuſtodie needs not be formally arreſted.

Co. l. 6. 29. b. 2. *Greens* caſe.

3 When a Parſon is admitted, inſtituted, and inducted to a Church, and doth not read the Articles according to the Statute of 13 Eliz. 12. the Benefice is thereupon void by force of that Statute, without procuring a ſentence declaratory to deprive him; for it will be needleſſe to obtaine ſuch a ſentence, when the Living is already voyd, and open, for the Patron to preſent another. An Incumbent not reading the Articles is out without ſentence.

Co. l. 8. 61. a. 3. *Beechers* caſe. Co. lib. 8. 126. a. b.

4 In judicial proceſſe, the Plaintiffe ſhall not be enjoyned to finde pledges de proſequendo; for in thoſe proceſſe, although the Plaintiff be barred, nonſuited, or that the Writ abate, yet ſhall he not be amerced, becauſe ſuch proceſſe are grounded upon a judgement and record; And it is a needleſſe and vaine thing to binde the Plaintiff to finde pledges in ſuch caſes, where he cannot be amerced, Vide ſupra 35. 20. In a Judiciall writ the plaintiff ſhall not find pledges.

The caſe of the City of *London*.

5 That which appears plainly to the Court, ought not to be averred by the party: So in the City of Londons caſe, the Conſtitution there made appearing to be agreeable to, and warranted by their Charter, needed not to be ſo averred. So alſo no price of money, ſhall be expreſſed in the Writ, becauſe it appears of it ſelfe, 46 E. 3. 16. Likewiſe 12 H. 4. 17. The ſonne within age brings an Aſſiſe of Mortdanceſter, he ought not to aver, that it is within time of limitation; for it appears. That which appears need not be averred.

Co. l. 10. 67. b. 4. The caſe of the Churchwarden of St. Saviour, &c.

6 In a ſpeciall verdict concerning a Bargain and Sale, Demiſe, or the like, the Jurors ſhall not be conſtrained to finde the payment of the money, mentioned amongſt the other conſiderations; for it ſhall be needleſſe to finde that; which is affirmed to be already payd and ſatisfied in time before the Grant, and is a perſonall conſideration already executed; And this is true, as well in the Kings caſe, as in the caſe of a Subject. The conſideration not to be found by a Jury.

F. N. B. 38. l.

7 Where, in a writ of right of Advowſon, &c. the Defendant claims the ſame Advowſon as Parſon imparſonée, albeit the title be found for the Defendant, yet ſhall he not in that caſe have a Writ to the Biſhop, ad admittendum Clericum: For, in conſtruction of Law, he is already in the Benefice. Parſon imparſonee ſhall not have a writ to the Biſhop.

F. N. B. 106. g, h.

8 If a man recover in a Præcipe quod reddat againſt a Tenant by falſe Verdict, the Tenant cannot have an attaint before execution bee had againſt him; becauſe in an Attaint, the judgement is, that he ſhall be reſtored, &c. and it were improper and needleſſe to give ſuch judgement, when the Tenant ſtill retains the poſſeſſion of the land. Note, that this is put as a quere in Fitz: but hee ſeemes rather to favour this opinion, &c. No attaint before execution.

9 In

The tenants title need not be averred pretenced.

9 In an action upon the Statute of 32 H.8. 9. against buying of pretenced Titles, if the Plaintiff sheweth by his count, that neither the Defendant nor any of his Ancestors, nor any other by whom he claims, &c. were in possession of the land, &c. nor of the reversion or remainder, &c. nor received the rents or profits, &c. by the space of a yeare, &c. The Plaintiff need not aver the title to be pretenced; for the Statute it selfe maketh the right of him which hath not been so in possession, to be pretenced; and therefore to aver that, which appears plainly by the Statute it selfe and the Declaration, is needlesse and impertinent: So if it be pleaded, that the Lessée surrendred to the Grantée of the reversion, there is no need of pleading attornment; for attornment is included in the surrender. Pl.Co. 87.b.3. *Partridges* case.

No need of attornment.

40 Where the foundation faileth, all goeth to the ground, *Debile fundamentum fallit opus, & contrà.*

Feme shall not be endowed.

1 If a man be Tenant in fée taile generall, and makes a Feoffment in fée, and takes back an estate to him and his heires in fée, and they takes wife, and hath issue and dies, his wife shall not be endowed; for that her title of Dower is grounded upon the estate in fée, which her Husband had during the coverture; Now, that Fée-simple vanished by the remitter of the heire in taile, and therefore her title of Dower must needs vanish also: For, her issue hath not the land by the descent of the Fée-simple, but by force of the intaile; There is the same law, where the Tenant in taile disseiseth the discontinuee, &c. Co. Inst. pars 1 31.b.4. F.N.B.149.f.

Livery voyd.

2 When a deed of Feoffment is voyd in it selfe, if livery be made according to the forme and effect of that deed, the livery is also voyd; As if A. by deed give land to B. to have and to hold after the death of A. to B. and his heirs; this is a voyd deed, because he cannot reserve to himselfe a particular estate, and if livery be made according to that deed, the livery is likewise voyd; because the livery referreth to a deed, that hath no effect in Law, and therefore cannot worke, Secundam formam & effectum of that deed, &c. Co. ibid. 48. b. 1.

An action of Waste gone.

3 Regularly none shall have an action of Waste, unlesse he hath the immediate estate of inheritance, and therefore if hanging an action of Waste, an estate taile determines, and the Plaintiff becomes Tenant in taile after possibility, &c. the action of Waste is gone. Co. ibid. 55. b. 3.

Setting of crosses shall not now forfeit the land.

4 In ancient time, amongst divers wayes that lands might escheat or be forfeited to the Lords of whom they were holden, this was one, if the Tenants did erect Crosses upon their Houses or Tenements in prejudice of the Lords; to the end the Tenants might claim the priviledge of the Hospitalers, and so defend themselves against their Lords, by such erecting of Crosses they were subject to forfeit their tenancies; but now since it hath pleased God by the light of the Gospel to banish out of our Church and Common-wealth all such superstitious reliques, the danger of forfeiting Lands that way is also banished. Co. ibid. 93. b. 4.

Homage may be repealed.

5 Regularly it is true which Littleton saith, that when a Tenant hath once done homage to his Lord, he is excused for term of his life to make homage to any other Alienée or heirs of the Lord; Howbeit it faileth in this case following; A. holdeth of B. as of the Mannor of Dale, whereof B. is seised in taile; B. discontinueth the estate taile, and taketh back an estate in Fée-simple; A. doth homage to B. B. dieth seized, and the Issue in taile entreth; In this case A. shall do homage again to the heire in taile of B. because he is remitted to the estate taile, and the estate in fée, that his father had (in respect whereof the homage was done) is banished, and therefore the homage it selfe is also banished; for the heire in taile is in of a new estate, in respect whereof A. ought to doe a Co. ibid. 70. b. 3. Litt. §. 148.

a new homage. So likewiſe it is, when the Tenant hath done homage, and the Mannor is afterwards recovered from the Lord in a Præcipe quod reddat, &c. by a Stranger; In this caſe alſo the Tenant ſhall do homage againe to the Stranger; becauſe the eſtate of him, that received the firſt homage, is defeated by the recovery, &c. It is otherwiſe when the Mannor is aliened to a Stranger, or deſcends to the heire without defeaſance, as aforeſaid, of the original eſtate.

Co. ibid. 128. b. 3. ' 6 When the ground or cauſe of an Action faileth, there muſt needs the Action it ſelfe alſo faile; as if an out-lawed perſon brings an Action, the ground and cauſe of which Action is forfeited by the Out-lawry (as in an Action of Debt, Detinue, or the like) there the Defendant may plead the Out-lawry it ſelfe in barre of that Action, and ſhall thereby conclude the Plaintife: It is otherwiſe in real or perſonal Actions, where the damages are uncertaine (as in treſpaſſe of Battery, of Goods, of breaking his Cloſe and the like) and are not forfeited by the Out-lawry, for there the Out-lawry muſt be pleaded in diſability of the perſon. Where the ground of an action failes, all is gone, &c.

Co. ibid. 138. a. 4. 7 Tenant in Taile of a Mannor, whereunto a Villain is regardant, enfeoffeth the Villaine of the Mannor and dieth; Here the iſſue after recovery of the Mannor in a Formedon againſt the Villaine, may ſeiſe the Villaine, and the bringing of that Writ in this caſe ſhall worke no manumiſſion, becauſe at the time of the Writ brought he was no Villaine, and the eſtate, by reaſon whereof he might claime the priviledge of manumiſſion, being defeated, the manumiſſion it ſelfe is alſo defeated. No manumiſſion by action brought by the Lord.

Co. ibid. 147. a. 4. 41 E. 3. 13. *per Finchden.* 8 A man by Deed grants a rent of 40 s. to another out of the Mannor of D. to have and perceive to him and his heires, and grants over by the ſame deed (or by another) that if the rent be behind, the Grantee ſhall diſtraine in the Mannor of S. Here, both the Mannors are charged, the one with the rent, the other with a diſtreſſe, the one iſſuing out of the land, the other to be taken upon the land; Now in this caſe if the Mannor of D. be evicted by an ſuper Title, all the rent is extinct, and ſo (by conſequence) both the Mannors diſcharged, but if the Mannor of S. be only evicted, all the rent doth ſtill remain, &c. Rent out of land evicted.

Co. ibid. 156. a. 4. 9 If a Pannel upon a Venire facias be returned, and alſo a Tales; and the array of the Principal is challenged, if the Triors quaſh the array of the Principal, they ſhall not trie the array of the Tales; for now it is, as if there had been no apparance at all of the Principal Pannel; but if the Triors affirme the array of the Principal, then ſhall they alſo trie the array of the Tales, &c. Challenge.

Co. ibid. 223. b. & 224. a. 3. 10 If a Feoffment be made upon Condition that the Feoffee ſhall not alien in Mortmaine, this is good, becauſe the Condition is backed by a Statute Law; for ſuch Alienations are prohibited by the Statute of Mortmaine: And regularly whatſoever is prohibited by Law, may be prohibited alſo by Condition, be it malum prohibitum or malum in ſe. In ancient Deeds of Feoffment in Fee, there was moſt commonly a clauſe, Quòd licitum ſit donatorio, rem datam dare vel vendere, cui voluerit, exceptis viris religioſis & Judæis. If By-lawes made in inferiour Courts be barred by the Common Law or ſome Statute Law, or warranted by ſome lawfull and reaſonable Cuſtome of the place, or are good for the Common-wealth; although there be but a few of the Jury that make them, yet thoſe Orders, or By-lawes will bind all the reſt of the inhabitants within that Juriſdiction; by reaſon of the true foundation, upon which they are grounded, &c. Good conditions.

Litt. § 362. So likewiſe if Tenements be given in taile, upon Condition the Tenant ſhall not diſcontinue the taile, this is a good Condition, becauſe warranted by the Statute of Weſtm. 2. cap. 1, &c.

Releaſe to one having onely a right, or upon grant without mornement void.

11 If a Diſſeiſor make a Leaſe for life, the Diſſeiſee may releaſe to the Leſſee, and ſuch a releaſe ſhall ſtand good: but if the Diſſeiſor make a Leaſe for yeares, a releaſe by the Diſſeiſee to ſuch a Leſſee is not good; becauſe he hath no eſtate of Freehold, upon which the releaſe may enure: Howbeit, if the Diſſeiſor make a Leaſe for life, the remainder to another for life; in Taile, or in Fee; a releaſe by the Diſſeiſee to him in remainder is good; becauſe of the remainder of the eſtate that is in him, upon which the releaſe may worke: It is otherwiſe in the laſt caſe, if the Tenant for life in poſſeſſion be diſſeiſed; for then a releaſe by the Diſſeiſee to any of them in remainder (having but a bare right in the land) hath not good ground, upon which it may worke, &c. And therefore if lands be given to a man in taile, reſerving to the Donor and his heires a certaine rent, if the Donee be diſſeiſed, and the Donor releaſe unto the Donee all his right; albeit the rent is extinct by that releaſe, yet is the reverſion ſtill in the Donor, becauſe at the time of the releaſe made the Donee had but a bare right in the land; So that if the Donee afterwards enter upon the Diſſeiſor, although he ſhall hold the land diſcharged of the rent, yet ſhall he be Tenant in taile as he was before. So likewiſe if there be Lord, and Tenant, and the Tenant makes a Feoffment in Fee of the land, but the Feoffee never becomes Tenant to the Lord, in this caſe a releaſe to the Tenant is void; becauſe at the time of the releaſe made, the Tenant had no right at all in the land, &c.

Co.ibid.266.a. 1.

Co.ibid.167.a. 1.

Co.ibid.a.4.

Litl. § 455.

Litt. Sect.457

Releaſes good and void.

12 If a man let his land for terme of yeares, and the Leſſor releaſeth to the Leſſee all his right, &c. before the Leſſee entreth into the land by force of the Leaſe; ſuch a releaſe is void; becauſe before entry he hath but intereſſe termini, and no poſſeſſion, and therefore a releaſe, which enures by way of enlarging an eſtate cannot worke without a poſſeſſion, for before poſſeſſion there is no reverſion: And yet if a Tenant for twenty yeares in poſſeſſion make a Leaſe to B. for five yeares, and B. enter; a releaſe to the firſt Leſſee is good; becauſe he had an actual poſſeſſion, and the poſſeſſion of his Leſſee is his poſſeſſion; So it is if a man make a Leaſe for yeares, the remainder for yeares, and the firſt Leſſee doth enter, a releaſe to him in the remainder for yeares is good to enlarge his eſtate: But concerning a releaſe before entry there is a diverſity betwixt a Leaſe for life, and a Leaſe for yeares; for before the Leſſee for yeares enter, a releaſe made to him is not good, as alſo ſaid; but if a man make a Leaſe for life, the remainder for life, and the firſt Leſſee dieth, a releaſe to him in the remainder, and to his heires is good to enlarge his eſtate; before he make any actual entry; becauſe he hath an eſtate of a Freehold in Law in him, which may be enlarged by releaſe before entry, &c.

Litt.Sect.459. Co.ibid.270.a. 3.

Co.ibid.b.2.

Releaſe void.

13 If an Infant make a Leaſe for life, and the Leſſee granteth over his eſtate with Warranty, the Infant at full age bringeth a Dum fuit infra ætatem, the Tenant voucheth the Grantor, who entreth into Warranty, the Demandant releaſeth to him and his heires; Albeit here is privity in Law, and a tenancy in ſuppoſition of Law, yet becauſe he to whom the releaſe is made (in rei veritate) hath no eſtate, it cannot enure to him by way of enlargement; for how can that releaſe worke upon an eſtate, that is not, or how can his eſtate be enlarged, that hath not any? So if a Tenant by the curteſie grant over his eſtate, he is ſtill Tenant as to an Action of Waſt, Attornement, &c. and yet a releaſe to him and his heires cannot enure to enlarge his eſtate, that hath no eſtate at all, &c.

Co.ibid.273.a. 2,3.

Releaſe for a time good after entry.

14 When a man is ſeiſed of any lands in Fee ſimple, a releaſe to him of all the right that another hath in the ſame lands, is good without the word heires; becauſe he had Fee ſimple at the time of the releaſe

Litt.Sect.465. Co.ibid.274.a. 3. & Litt.Sect. 473,474.

Littl. §. 519, 520. releaſe made; and therefore a releaſe unto him, in that caſe, for a day, or an hour, is a releaſe for ever to him, and his heires, &c. as if there be Diſſeiſor and Diſſeiſée, a releaſe by the Diſſeiſée to the Diſſeiſor is good without the word heires, to eſtabliſh the eſtate to him and his heires, &c. There is the ſame Law of a Confirmation.

Co. ibid. 276. b. 4. 15 If the Diſſeiſor make a Leaſe for life, and the Leſſée maketh a Feoffment in Fee, and to Diſſeiſée releaſeth he the Feoffee, that releaſe is good to prevent the entry of the Diſſeiſor upon the Feoffee: becauſe the Diſſeiſee had power to enter upon the Feoffee before the releaſe made: It is otherwiſe, where the entry of the Diſſeiſor is not congeable, as if a man make a Leaſe for life, and the Leſſee for life is diſſeiſed, and that Diſſeiſor is alſo diſſeiſed, and he in the reverſion releaſeth to the ſecond Diſſeiſor, the firſt Diſſeiſor ſhall enter upon the ſecond Diſſeiſor, and his entry is lawful, and if the leſſee for life re-enter, he ſhall leave the reverſion in the firſt Diſſeiſor; and the cauſe is, for that the entry of the Diſſeiſee (during the life of the Tenant for life, and by conſequent) at the time of the releaſe made was not lawfull.

Littl. § 475. Co. ibid. 277. a. 2. 16 A man that hath a Sonne within age, is diſſeiſed, and dies, and after the Son being within age, the Diſſeiſor alſo dies, and the land deſcends to his heire, and a Stranger abates, and after the Sonne, when he comes to full age, releaſeth all his right to the Abator; In this caſe, the heire of the Diſſeiſor ſhall not have an Aſſiſe of Mordancеſter againſt the Abator, but ſhall be barred; becauſe the Abator is armed with the right of the Sonne of the Diſſeiſee by his releaſe, and the entry of the Sonne was congeable, for that he was within age at the time of the deſcent caſt: It is otherwiſe, where a man of full age is diſſeiſed, and a deſcent caſt, &c. for then a releaſe to the Abator, &c. is not good; becauſe in that caſe, the entry of the Diſſeiſee being taken away, the releaſe of the Diſſeiſee to the Abator wants a good foundation, upon which it may be grounded, viz. the title of entry, which in the other caſe it hath. Releaſe to an Abater good and bad.

Co. Inſt. pars 1 295. b. 3. 17 It is ſaid of a Confirmation, that it cannot ſtrengthen a void eſtate: Confirmatio eſt nulla, ubi donum præcedens eſt invalidum, & ubi donatio nulla omnino, nec valebit confirmatio: For a Confirmation may make a voidable or defeaſible eſtate good; but it cannot work upon an eſtate, that is void in Law. Confirmation where good or bad.

Littl. §. 521. Co. ibid. 297. a. 3. 18 If my Diſſeiſor make a Leaſe for terms of life, the remainder over in Fee, and I confirme the eſtate of him in the remainder, without any Confirmation made to the Tenant for terme of life; In this caſe I cannot enter upon the Tenant for life, becauſe the remainder depends upon that eſtate; and therefore if his remainder ſhould be defeated, the remainder ſhould be alſo defeated; and it were not reaſonable, that I ſhould by my entry upon the Tenant for life defeat the remainder againſt my own Confirmation; There is alſo the ſame Law and Reaſon, if the Diſſeiſor had made a Leaſe for life reſerving the reverſion to himſelf, &c. for in that caſe neither could I have entred upon Tenant for life, leaſt I ſhould have thereby alſo deſtroyed the reverſion againſt my own Confirmation, &c. And therefore it hath been adjudged, that if a Diſſeiſor make a Leaſe for life, and after levie a Fine of the reverſion, and the five yeares paſſe, ſo as the Diſſeiſee is for the reverſion barred, he ſhall not afterwards enter upon the Leſſee for life; becauſe then the Diſſeiſee by entry upon the Tenant for life ſhould alſo regaine the reverſion, which was irrecoverably loſt by force of the ſtatute. Confirmation not good.

Co. ibid. 298. a. 1.

Reported by Sir *John Popham* Chiefe Juſtice.

Co. ibid. 298. a. 2. 19 It is regularly true, that when the particular eſtate is defeated, the remainder thereby ſhall be alſo defeated, nevertheleſſe it falleth in divers Remainder where defeaſ-

Where and where not.

divers cases: for where the particular estate and remainder depend upon one title, there the defeating of the particular estate is the defeating of the remainder: but where the particular estate is defeasible, & the remainder by good title, there although the particular estate be defeated, yet the remainder continues good: As if the Lessor disseise A. Lessee for life, and make a Lease to B. for the life of A. the remainder to C. in Fee, albeit A. enter and defeat the estate for life, yet the remainder to C. being once vested by good title shall not be avoided, for it were against reason, that the Lessor should have the remainder against against his own Livery; So it is also, if a Lease be made to an Infant for life, the remainder in Fee, the Infant at his full age disagrees to the estate for life, yet the remainder stands good: for that it was once vested by good title; And in both these cases, there was a particular estate at the time of the remainder created.

Pl. Com. Colthirsts case.

A void remainder.

20 If the Lord grant by Deed his Seigniory to A. for life, the remainder to B. in fee: A. dieth, and then the Tenant attorns to B. this attornement is voide; because it is not according to the Grant; for then B. should have a Remainder without any particular estate to support it; and the particular estate being void for want of attornement, the Remainder, which depends upon it, is also void.

Co. bid. 310. a. 1.

Reversion void.

21 Tenant in taile makes a Lease for life to A. for the life of A. and after grants the reversion to B. in fee, the Tenant in taile dies, and after that A. dies; In this case the entry of the issue in taile is lawfull; because by the death of the Lessee the discontinuance is determined, and consequently the grant made of the reversion, gained upon that discontinuance, is void also.

Co. ibid. 333. a. 2.

Rent, Common, &c. charged upon the land, where good or void.

22 If Tenant in taile enfeoffe the heire in taile, being under age, and when the heir is at full age he chargeth the land with a Rent, Common, &c. and after the Tenant in taile dies, whereupon the heire is remitted; In this case by the remitter the grant of the Rent, Common, &c. is determined: because the Grantor had not any right of the estate in taile in him at the time of the grant, but only the estate in Fee simple gained by the Feoffment, which is wholly defeated, and the state of the land, out of which the Rent, Common, &c. issued, being defeated, the rent is defeated also: But if Tenant in taile make a Lease for life, whereby he gaineth a new reversion in fee (so long as Tenant for life liveth) and he granteth a rent charge out of the reversion, and after Tenant for life dieth, whereby the Grantor becometh Tenant in taile again, and the reversion in fee defeated; yet because the Grantor had a right in the entaile in him, cloathed with a defeasible Fee simple, the rent charge remaineth good against him, but not against his issue, &c.

Litl. §. 660. Co. ibid. 349. a. 1.

The like.

23 If the heire apparent of the Disseisee disseise the Disseisor, and grant a rent charge, and then the Disseisee dieth, the Grantor shall hold it discharged; for his former estate being defeated by the remitter, the rent, which was granted out of it, is also defeated: So also if the Father disseise the Grand-father, and granteth a rent charge, and dieth, now is the entry of the Grand-father taken away; if after the Grand-father dieth, the Sonne is remitted, and shall avoid the charge, &c.

Co. ibid. a 5.

A Discontinuance defeated is also all that depends thereupon.

24 If the Baron discontinue the land of the Feme, and afterwards the Discontinuee lets the same land to the Baron and Feme for life by Deed indented reserving rent, and for default of payment a re-entry, &c. and because the rent is arrear, the Discontinuee re-enters for this entry, the Baron with the Feme cannot have an Assise of Novel disseisin, because he is estopped, &c. but the Feme after the death of the Baron, shall have such an Assise against the Discontinuee; because

Litl. §. 679. Co. ibid. 357. b. 4.

cauſe both the reverſion of the Diſcontinuée, and the eſtate for life made to the Baron and Feme being defeated by the remitter of the Feme, the conditions, and rents, and all other things annexed to, or reſerved upon that eſtate for life, are alſo defeated.

Litt'. § 686, 687. Co. ibid. 360. a. — 25 If an Abbot, Biſhop or Deane, &c. aliens the land belonging to his houſe, Biſhoprick or Deanary, &c. without aſſent, &c. and after the Alienée chargeth the land; and then the Abbot, Biſhop or Deane, &c. by licence reſumes the eſtate again to him and his Succeſſors, and after the Abbot, Biſhop or Deane, &c. dies; In this caſe the Succeſſor ſhall defeat the charge; becauſe by his remitter he defeats the eſtate, out of which it was granted, &c. — Charges upon land voidable.

Littl. § 690. Co. ibid. 361. b. 3. — 26 If judgement be given againſt Tenant in taile upon a feigned or falſe action, and the Tenant in taile die before execution, by which the lands deſcend to the Iſſue in tail, and then he that recovers ſues a Scire facias out of the judgment to have execution thereof againſt the iſſue in taile; Here, if the iſſue plead to the Scire facias, and prove the recovery to be falſe (which was the ground of the Judgement) he ſhall thereby barre the Demandant to have execution of that judgement: It is otherwiſe when the Tenant in taile voucheth and recovereth in value, &c. by reaſon of the intended recompence, &c. — Tenant in taile. Feigned recovery.

Co. ibid. 365. b. 3. 366. a. 1. 380 a. 3. Littl. § 725, 726. — 27 Before the Statute of 11 H. 7. 20. if a woman had been Tenant for life, the remainder or reverſion to the next heire, and the woman had alienen in fee with warranty, and dies, this warranty being collaterall had barred the heire in remainder or reverſion, howbeit in that caſe if the heire that had the reverſion or remainder had by entry in the life of the woman avoyded the eſtate ſo alienen, the warranty being annexed unto that eſtate, had been avoided alſo. — Warranty defeated.

Co. ibid. 385. a. 4. — 28 If a man make a gift in taile at this day, and warrant the land to him, his heirs and aſſignes, and after the Donée make a feoffment and dieth without iſſue, the warranty is expired, as to any voucher or rebater; for that the eſtate in taile, whereunto it was knit, is ſpent: It had been otherwiſe, if the Feoffment had been made before the Statute De donis conditionalibus; For then both the Donée and Feoffee had a fee ſimple: And ſo are our Books to be intended in this and the like caſes. Co. l. 3. 62. 63. Lincoln Colledge caſe, & l. 10. 96. b. Seymors caſe. — Warranty extinct.

Littl. ſect 741. Co. ibid 389. a. 3. — 29 If Tenant in taile diſcontinue the taile in fee, and the Diſcontinuée is diſſeiſed, and the brother of the Tenant in taile releaſeth by his deed to the Diſſeiſor all his right, &c. with warranty in fee, and dieth without iſſue, and the Tenant in taile hath iſſue and die; Now is the iſſue barred of his action by force of the Collateral warranty deſcended upon him; but if afterwards the Diſcontinuée enter upon the Diſſeiſor, then may the heire in taile well have his action of Formedon, &c. becauſe the warranty is defeated; for when the eſtate, whereunto a warranty is annexed, is defeated, (although it be by a meer Stranger, as in the caſe abovelaid) the warranty it ſelfe is alſo defeated: Sublato principali tollitur adjunctum, &c. So likewiſe if the Diſcontinuée make feoffment in fee, reſerving rent, and upon default, &c. a re-entry, &c. and a collateral warranty of an Anceſtor is made unto the Feoffee upon condition, &c. which Anceſtor dies without iſſue; In this caſe alſo, if the Diſcontinuee by entry for the Condition broken, defeat the eſtate of the Feoffee, the warranty is alſo defeated, and the iſſue may bring his Formedon as before. Finch 14. — The like.

Co. ib. 30. a. 1. Co. lib. 8. 34. *Paines* caſe. — 30 If a woman Tenant in taile general taketh an husband and hath iſſue, which iſſue dieth, and the wife dieth without any other iſſue, yet the husband ſhall be Tenant by the Courteſie, albeit the eſtate taile be determined, becauſe he was entitled to be Tenant per legem Angliæ, before the eſtate taile was ſpent, and for that the Land it ſelfe remaineth. — Tenant by the Courteſie.

eth. But if a woman make a gift in taile, and reserve a rent to her and to her heirs, and after taketh husband and hath issue, and the Donee dieth without issue, the wife also dieth; In this case, the husband shall not be Tenant by the courtesie of the Rent; for that the Rent newly reserved is by the act of God determined, and no estate thereof remaineth: Howbeit, if a man be seised in fee of a Rent, and maketh a gift in taile generall to a woman, she taketh husband, and hath issue, the issue dieth, the wife dieth without any other issue, he shall be Tenant by the Courtesie of the Rent, because the Rent remaineth, &c.

Rent extinct salvo jure.

A lease for years determined.

31 A. Lessee for the life of B. makes a lease for yeares by deed indented, and after purchaseth the reversion in fee, B. dieth; In this case A. shall avoyd his own lease, although it be by deed indented; for he may confesse and avoyd the lease, which took effect in point of interest, and determined by the death of B. because the estate which A. had in the land for the life of B. (out of which the lease for years was derived) being determined, the lease for years it selfe must needs also determine. Co. Inst. part 1 47. b. 4.

Lease for yeare.

An estoppel determined.

32 If a man take a lease for yeares of his own land by deed indented, the estoppel in this case doth not continue after the terme ended; because as by the making of the lease the Estoppel doth grow, so (consequently) by the end of the lease, the Estoppel is determined; For, that part of the Indenture, which before belonged to the Lessee, doth after the terme ended, belong to the Lessor, which should not be, if the Estoppel continued. 38 H. 6. 24. 30 E. 3. 21. Vide 19. 4. Co. bid. M. 31, 32 Eliz. *Londons* case.

Warranty may be granted & increase upon an estate for life, otherwise for years. Acuter.

33 A man letteth Lands for life upon Condition, to have fee, and warranteth the land in Forma prædicta, afterwards the Lessee performs the Condition, whereby the Lessee hath fee; In this case the warranty shall extend, and increase according to the estate: And so it is also, albeit the Lessor had died before the performance of the Condition; for then also the warranty shall rise and increase according to the estate; and yet the Lessor himselfe was never bound to the warranty, but it hath relation from the first Livery: And the reason of this is, because a warranty being a Covenant reall executory, may extend to an estate in futuro, having an estate whereupon it may worke in the beginning: But if a man grant a Seigniory for years upon Condition, to have fee with a warranty in forma prædicta, and after the condition is performed, this shall not extend to the fee; because the first estate was but for yeares, which was not capable of a warranty; And so it is, if a man make a lease for yeares, the remainder in fee, and warrant the land in forma prædicta, he in the remainder cannot take benefit of the warranty, because he is not party to the deed, and immediately he cannot take, if he were party to the deed, because he is named after the Habendum, and the estate for years is not capable of a warranty, &c. Co. ibid. 378. a. 4.

Remainder grants Rent charge voydable.

34 A. is Tenant in taile, the remainder to B. in taile, B. grants a rent charge issuing out of the land to C. and his heirs, A. suffers a common recovery and dies without issue; In this case C. shall not have the rent, because the remainder of B. being defeated by the recovery, the estate of his Grantee in the rent is also defeated. Co. lib. 1. 62. b. 4. *Caples* case.

A remainder must vest, or before determining the particular estate, or *eo instante* that it determines.

35 A. seized of land holden in Socage deviseth it to D. for life, and after to the next heire male of B. B. hath issue C. A. dies, B. enfeoffs D. with warranty; In this case, by the feoffment of the Tenant for life, the remainder is destroyed; for every contingent remainder ought to vest, either during the particular estate, or at least *eo instante*, that it determines; because if the particular estate which should support the remainder, be once determined in Deed or in Law, before the contingency fall, the remainder it selfe must needs be also determined and voyd: Here therefore, in as much as by the feoffment of B. his estate for life was determined by a condition in Law annexed unto it, and cannot possibly Co. lib. 1. 66. b. 4. *Archers* case, per tot. Curiam.

poſſibly be afterwards revived, for this cauſe the contingent remainder is deſtroyed as aforeſaid, againſt the opinion of Gaſcoigne, 7 H. 4. 23. b.

Co. lib. 1. 135. a. 14. *Chudleys* caſe. 36 A. grants land to B. to the uſe of B. for the life of C. the remainder to the heirs male of C. the remainder to the next heirs of A. B. makes a feoffment to C. and his heirs; Here, by that feoffment, the eſtate for life is deſtroyed; and by conſequent the remainders which depend upon it, are deſtroyed alſo; for by the feoffment of the Tenant for life, title of Entry was given for the forfeiture, and at that time he in the next future remainder was not in eſſe to take it; and therefore the remainders in futuro by this matter ex poſt facto were utterly deſtroyed & made void: So if Tenant for life be, the remainder to the right heirs of I. S. If in this caſe Tenant for life make feoffment in fee during the life of I. S. the remainder is deſtroyed; for otherwiſe there ſhould be a remainder without a particular eſtate, which cannot be. The like.

Co ibid. b. 3. 11 R. 2. Detinue 46. 37 A gift in tailе was made to A. C. the remainder to the right heirs of A. S. the Donee makes feoffment to B. in fee, and after A. S. dies, the right heir of A. S. ſhall never have that remainder; for the eſtate of the Land was by the feoffment of the Tenant in tail devеſted and diſcontinued, and all the eſtates veſted in the Feoffee, neither was there any particular Eſtate either in eſſe, or in right to ſupport the remainder when it fell, &c. The like.

Co. l. 2. 52. a. 4. Sir *Hugh Cholmleys* caſe. 38 If a man make a gift in tailе, the remainder in fee, he in the remainder grants his remainder to another for life, the remainder to the King in fee, upon condition that if he pay or tender 10 l. at the Rolls, &c. that then the grant ſhall be void: The tenant in tailе ſuffers a recovery. and thereby deſtroys not onely the eſtate tailе it ſelfe, but likewiſe the remainder in fee, and the eſtate for life granted by him in the remainder, and ſo by conſequent the remainder to the King, as alſo the condition, which depend upon the eſtate for life, &c. The like.

Co. lib. 2. 55. *Bucklers* caſe. 39 There is a diverſity betwixt a grant made by the agreement of the parties, which ſtandeth not with the rules of Law, & can never by any ſubſequent (as by livery or attornment) be made good; & a grant, which is good at the beginning, but is to have his conſummation and perfection by ſome Ceremony ſubſequent: As in caſe of a Charter of feoffment, if the Feoffee enter before livery he is not a Diſſeiſor; for the Charter is good, and the agreement of the parties is according to Law, and that may be made good by livery of ſeiſin ſubſequent: But if lands in leaſe for years be granted to C. Habendum tenementa prædicta from Michaelmas next for life, and after Michaelmas the Tenant attorns; In this caſe the grant to C. is voyd, and cannot afterwards be made good by attornment, and therefore if he enter, he is made a Diſſeiſor; for the Law will make conſtruction upon the whole grant, and an eſtate of Freehold cannot commence in futuro: And therefore obſerve well the difference betwixt a good beginning or foundation capable of a ſtructure, and an evill one, which wants a foundation whereon the ſtructure may ſtand, and be built, &c. Grant made upon a good ground & *contra*; Diverſity.

Co. lib. 4. 24. a. 1. Copihold caſes. *Clarke* and *Penyfathers* caſe. 40 If a Diſſeiſor or the feoffee of a Diſſeiſor, or any other, that hath a forfeitable or feaſible eſtate or intereſt ſubject to the action or entry of another, holdeth Court, and maketh any voluntary grant upon the eſcheat or forfeiture of a Copi-hold; ſuch voluntary grant ſhall not binde him that right hath; for when after re-continuance of the Manor by action or entry, he ſhall have defeated the title of ſuch Diſſeiſor, &c. he ſhall alſo avoyd ſuch voluntary grants: But if ſuch a Lord, that is in by ſuch defeaſible title, admit any of the Tenants upon ſurrender made to the uſe of another, or gives admittance to the heire upon deſcent, ſuch admittances are good, becauſe grounded upon the cuſtome of the Manor, Admittances of copihold.

Pannor, and therefore such acts are lawfull, and quodam modo judicial, which he may be forced to do in a Court of Equity; and for that cause such admittances will binde those that right have, &c.

Copihold released, a custome is lost. 41 If a Copihold estate be forfeit, or escheat, or otherwise fall into the Lords hands, if the Lord make a lease for years thereof, or for life, or any other estate by deed or without deed, or suffer it (before any new grant thereof) to be extended upon a Statute, recognizance, or the like; or if the Feme of the Lord have it assigned unto her in dower, &c. In all these cases and the like, the custome which supports the Copihold tenure being destroyed, the tenure it selfe is also destroyed, so that it shall never after be granted by Copie, or holden by Copie of Court Roll; Howbeit after it is so forfeited or escheated as aforesaid, the Lord may keep it as long as he please in his hands before he makes any voluntary grant of it; and yet the Custome shall be preserved, because it is all that while demised or demisable, and so it ought to be by the Custome, &c. Co.l.4.31.a. 3. *Frenches* case.

Lease void upon a void consideration. 42 The Kings patentee for years assigns divers parcells of the land to other severall persons, still reserving to himselfe part thereof, and takes another lease in reversion for 21 years, the principall consideration whereof was the surrender of the old lease (whereof he had assigned divers parcels to others, as aforesaid) And after 3 years of the last lease were expired, in consideration of the surrender of the same last lease, the King grants him another of all the same land for three lives: In this case, the last grant of the lease for lives was adjudged void; because when the Patentee took the second lease, the consideration thereof was the surrender of the first lease, which could not be any good consideration, for that he had before assigned divers parcels of the land to others, and then the King was deceived in his Grant, and (by consequent) the second lease was void; Now therefore the surrender of the second lease (which was void) being the consideration of granting the last lease for lives, that last lease, being granted upon a consideration which was not valuable, must needs be void also. Co.l.5.94.a.1. *Barwicks* case.

Journeys accounts. 43 If a Writ abate for Non-tenure of all, the Demandant shall not have a new writ by Journeys accounts; because the first writ was taken out without cause or ground (33 H. 6.) but a præcipe of a Pannor being abated for non-tenure of parcell, the Demandant shall have a Writ by Journeyes accounts, because the Tenant is Tenant of the residue, for which the Writ is brought, and it were hard to force the Demandant to discover, in whom the estate of every parcell of the Pannor stands. 4 E. 3. 159. Co.l.6.10.a.4. *Spencers* case.

Voydable leases. 44 When voidable leases, being void for a time, shall be ever after avoided, and when not, this difference is taken, viz. when the interest of him that makes the avoydance, is but for part of the terme, so that after his interest determined, a residue of the terme doth still remain; and when he, that makes the avoydance, so avoyds the whole interest, that no part of the terme at all doth remain after such avoidance: As if Tenant in taile of Lands in Capite make leases not warranted by the Statute of 32 H. 8. 28. and die, his heire being under age; In this case, although the King in right of the heir may avoid those leases for his time, yet if after the Kings interest determined, the heir accepts the rent, they shall be thereby made good again: But if the Patron of the Church of D. grant the prochein avoidance to another, and after (and before the Statute of 13 Eliz.) the Parson, Patron, and Ordinary had made a lease for years rendring rent, and the Parson had died, and the Grantee had presented a Clerk, who had been admitted, instituted, &c. in this case, that lease had been absolutely destroyed, and the Successor (although the Patron, that was party to the lease, present him) shall avoid it, &c. Co.l.7.8.a.2. The Earl of *Bedfords* case.

Co. l. 8. 43. b. 4. in *whittingbams* case. 4 H. 6. fol. 2.

45 A man seized of certain Lands in right of his wife, makes feoffment by deed indented of it to certain persons upon condition, that they shall let the Land again unto the Baron and Feme for their lives, with divers remainders over in taile, the remainder to the right heirs of the Baron: and after the Baron dies, the Feoffées let the Land to the Feme for life, the remainders over in taile, the remainder to the right heirs of the Feme, whereas it should have bên to the right heirs of the Baron; In this case, when the heir of the Baron enters for the condition broken, by his entry the feoffment that made the discontinuance, is defeated, and so by consequence the discontinuance it self is defeated also, so that the Feme may enter, and shall be in as of her former estate. Defeasable estates.

Co. l. 8. 75. a. 3. in the Lord *Staffords* case. *per Coke* chief Iustice.

46 When one estate is to increase upon another estate by force of a condition precedent, the first estate ought to be permanent, which may serve as a firme foundation, whereon to build the future estate, and not removeable at the will of the Grantor or Lessor: And therefore if a man grant an Advowson to another at will, upon condition that if he do such an act, he shall have fée; In this case, the estate at will is no such foundation as the Law requires to support the encrease of an estate of Franktenement or Inheritance; for the Grantor may determine his will before the performance of the condition, and so avoid his owne grant, and a Lease at Will cannot support a remainder over; So likewise if a man grant an Advowson, Rent, &c. for years upon condition, if the Lessée within a yeare pay 10 s. he shall have for life; and if he pay 20 s. within another yeare after he shall have fée, the Lessée performs both conditions, yet shall he have but for life; for the estate for life at the time of the Grant was but in contingency, which is no foundation upon which a greater estate may encrease; because a possibility cannot encrease upon a possibility, and the estate of Fee-simple cannot encrease upon the estate for years, for that is drowned by the accession of the estate for life. Estates by accruer.

Co. l. 8. 142. b. 1. in Doctor *Druries* case.

47 If a man hath judgement in a Quare Impedit, and hath a Writ to the Bishop, and the Bishop refuseth to admit his Clerk; Here the Plaintiff upon this collateral matter of refusall may have a Writ of Quare non admisit; but if the Defendant reverse the Judgement by a Writ of Error, and after the Plaintiff in the Quare Impedit brings his Quare non admisit, the Defendant may plead no such record, and so bar the Plaintiff of bringing that Writ (Vide 26 E. 3. fol. 75. per Wilby and Hill.) In like manner, if A. be taken by the Sheriffe in execution at the suit of B. upon an erroneous Judgement, and after make an escape, and after the judgement is reversed by a Writ of Error, the action upon the escape is lost, &c. *Quare Impedit.* Errour. Execution. Errour. Escape.

Ibid. the principall case.

48 If the return of an Exigent be erroneous, the Outlawry which is grounded thereupon, is erroneous also; because the Writ of Exigent is the warrant by which they proceed to the Outlawry. Vide Proctors case, 5 Eliz. Dyer 223. Exigent erroneous.

Ibid. 143. b. 2. 38 H. 6. 4. & 12.

49 One that has cause of privilege in Banco, is arrested in London, and delivers a Supersedias; notwithstanding which, the Recorder gives judgement, and he is taken in execution, and is thereupon removed in Banco by a Corpus cum causa; Now here, because after the Supersedeas delivered, there was a Nullity in the proceeding and judgement, the Court (without Writ of Error) awarded, that he should be discharged of the Execution, &c. Priviledge. Supersedeas.

Ibid. 143. a. 1.

50 If two Judgements are given, and the last depends meerly upon the first, as upon his foundation, there if the first fundamental judgment be reversed by Writ of Error or Attaint, the last (which appears in the Record to depend upon it) shall be reversed also; as in Assise and Redisseisin, so of a judgement upon the original, and another judgment in a Scire facias; so also of a judgement against the Tenant, and another against a Mouchee, and the like, &c. Two judgements. The first defeated.

51 The

Conuſee of a Statute.

Garniſhment.

51 The Conuſee of a Statute Staple in a writ of Detinue of the ſame Statute upon garniſhment recovers by erroneous Judgement againſt the Garniſee, and hath the Statute delivered unto him, the Garniſee brings a writ of Error, and the Conuſee ſues execution upon the Statute, and hath it; Here, albeit the Garniſee reverſe the judgement, yet inaſmuch as the Statute was executed, that execution ſhall not be avoided by the reverſall of the judgement, becauſe the judgement was onely to have the Statute delivered, and the Execution upon the Statute is a thing executed, not at all depending upon the judgement: And yet in this caſe (by the opinion of Coke Chiefe Juſtice) the Garniſee ſhall have remedy upon the reverſal of the judgement by an Audita querela; becauſe the cauſe and ground of the Collateral Action is diſproved, and annulled by the reverſall of the firſt judgement, and the firſt Plaintiff reſtored to his firſt action, upon which he may have his firſt and due remedie. Ibid. 142. b. 7 H. 6. 44. a.

Judgement, Execution.

Audita Querela.

Executors have execution.

The Will annulled.

Audita Querela.

52 Executors have judgement in account, and for the arrerages have the Defendant in execution, and afterwards the Teſtament was annulled, becauſe the Teſtator was an Idiot, and the Record ſpirituall was removed into the Chancery by Writ, and then ſent into the Kings Bench, where the Action was brought; And hereupon the Defendant brought an Audita querela, for that the Teſtament was diſproved, and it was reſolved in the Exchequer Chamber (an. 35 H. 8.) that the Audita querela would well lie. Ibid. 143. b. 4. *per Coke* chief Juſtice.

A *Melius Inquirend.* erroneous.

53 It was found by Mandamus 2 Jac. that P. S. held the Manor of O. in Socage of Mu: Eliz. as of her Manor of N. In 7 Jac. a Melius Inquirendum was awarded (reciting the former office) to enquire, whether the Manor of O. at the time of the death of P. S. was holden of the King in Capite, &c. whereupon an office was found, that at the time of the death of P. S. the ſaid Manor of O. was holden of Mu: Eliz. by Knight ſervice as of her Manor of N. and that at the taking of the inquiſition it was holden of the King, &c. In this caſe the Melius was repugnant in it ſelfe, becauſe it was impoſſible for the Jury to finde the Manor holden of King James at the death of P. S. which was in the fourth year of Mu: Eliz. for then it muſt needs be holden of the Queen, King James being then King of Scotland, &c. Now therefore, albeit the Jury by the Inquiſition had rightly found the tenure of the Manor, and that their finding thereof in that reſpect was good, and according to the truth of the caſe; yet becauſe it was not warranted by the Melius, which was the ground of their Inquiſition, all was adjudged inſufficient and void, and a new Melius inquirendum was awarded. Co. l. 8. 168. a. *Paris Slaughters* caſe.

An Idiot examined in Chancery.

54 A man that is found an Idiot from his nativity by office, may come into the Chancery and pray to be examined, or by his friends he may pray to be brought thither, and if it be found upon examination that he is no Idiot, the office thereof found, and all the examination, which was by force of the Writ or Commiſſion, are utterly void without any traverſe, monſtrance de Droit, or any other ſuit. Co. l. 9. 31. b. 4 in the caſe of the Abbot of *Strata Mercella.*

Aſſumpſit deſtroyed.

55 An Executrix in conſideration, that the Plaintiff will forbeare till Michaelmas to ſue for a debt due by the Teſtator to the Plaintiff upon loane, promiſeth to pay it at Michaelmas, and in an Action upon the caſe brought againſt her upon that promiſe, pleads non aſſumpſit; here, the conſideration of forbearance is good, becauſe although it be no benefit to the promiſer, yet is it damage to the Plaintiff: And yet in this caſe if (in rei veritate) the debt were not due debt, or the Executrix had not aſſets at the time of the promiſe, ſhe may give that in evidence, and ſhall be thereupon ayded; for then (in truth) there was not any conſideration, upon which the aſſumpſit might be grounded; becauſe to forbeare a debt, which was not due, or wherewith ſhe was not chargeable, could Co. lib. 9. 94. a. 4. *Will. Banes* caſe. *Per Coke* chief Juſtice.

be neither benefit to the Defendant, nor damage to the Plaintiff.

Co.l.9.139.a. 3.& 141.a.4. in *Beamonts* caſe. 7 H. 4. fol. 16.

56 Baron and Feme being Tenants in ſpecial taile, are divorced (viz. by ſuch a divorce, which diſſolves the marriage ab initio, and the Baron and Feme à vinculo matrimonii) in this caſe they have ever after but an eſtate for their lives, becauſe the marriage (which was the onely means whereby they might have had heirs inheritable of the eſtate taile) being diſſolved, the eſtate taile it ſelfe is thereby alſo determined, and extinct. A marriage diſſolved, and ſo an intaile grounded thereon.

Co. l. 10.76. a.4. the caſe of the Marſhalſea.

57 When a Court hath juriſdiction of the cauſe, and proceeds inverſa ordine, or erroneouſly; there no action will lie, either againſt the party that ſues, or againſt the Officer that executes the precept or proceſſe of the Court: But when the Court hath not juriſdiction of the cauſe, there all the proceeding is coram non judice, and actions will lie againſt them without any regard of the precept or proceſſe, &c. for the rule is Judicium à non ſuo judice datum nullius eſt momenti: See the booke at large. Erroneous proceeding in Court.

Co.l.10.96.a. 3.in *Edw. Seymors* caſe. 24 E.3.28. in *Caleys* caſe.

58 Tenant in taile, the remainder in taile to A. the reverſion in fée to himſelfe, bargains and ſels the land to B. and his heirs; Here, by the déed inrolled, &c. the Bargainée hath an eſtate deſcendable to his heirs, but determinable upon the death of the Tenant in taile, and hath alſo the reverſion in fée expectant upon the eſtate in remainder in taile, and here likewiſe the Feme of the Bargainée will be endowed: but in this caſe if the Tenant in taile die, the Dower which depended upon that eſtate, ſhall determine alſo. Dower determined.

Co.l.10.96.b. 1. *Edw: Seymors* caſe.

59 Tenant in taile, the remainder in taile to A. the reverſion in fée to himſelf, bargains and ſells the land to B. and his heirs, and afterwards alſo ledies a fine to B. & his heirs with warranty, &c. In this caſe, albeit A. be the next heir to the Tenant in taile, yet ſhall not this warranty bar his remainder; For every warranty ought to be knit and annexed to an eſtate, for that a warranty hath his eſſence by dependancy upon ſome eſtate; Now in this caſe at the time of the fine levyed, the warranty was annexed to the Fée-ſimple determinable upon the death of the Tenant in taile without iſſue, and alſo to the reverſion in fée, but doth not extend to the eſtate of A. in the remainder; for that was not diſplaced nor deveſted, but did ſtill continue in him, becauſe A. at the time of the fine levyed, and after was ſeiſed of his remainder: Now then if the warranty at the time of the creation of it were annexed to an eſtate, the Conuſée by his feoffment or other act cannot extend it farther than it was at the time of the creation of it; And therefore when the eſtate taile (unto which the warranty was annexed) is determined by the death of the Tenant in taile without iſſue, the warranty (which hath his eſſence by dependancy) is alſo determined; becauſe then there is no eſtate left to ſupport it, &c. Warranty determined.

30 E. 3. *caſu ultimo* in *Henry Pigots* caſe. Co.l.21.27.b. 3.

60 In Aſſiſe before Stouſe and others in the Countrey, the Tenant pleads feoffment of the Plaintiff to him by déed of the land in plea, to have and to hold to him and his heirs, comprehending a letter of Attorney to deliver Seiſin, &c. and (in truth) the Plaintiff was a lay man not lettered, and the déed with the warrant of Attorney was read unto him according to the form of an eſtate taile, and upon the ſame intent he ſealed and delivered the déed with the letter of Attorney in it to deliver Seiſin: In this caſe, the déed did not binde the man unlettered, but was adjudged void: And therefore, albeit the déed and the warrant of Attorney were two ſeveral clauſes, and that the ſaid warrant was well and truly read unto him; yet becauſe the ſame warrant did depend upon the feoffment, and had relation unto the eſtate in fee, that warrant of Attorney was adjudged void alſo, &c. A man unlettered not bound. Warranty void, as well as the deed.

Warranty defeated.

61 If a man enfeoffe another of land with warranty by deed, if the Feoffee make feoffment over, and take back an eſtate in fee; Here, the eſtate, unto which the warranty was annexed being deſtroyed, the warranty it ſelfe is alſo deſtroyed, and in this caſe he ſhall not have a warrantia cartæ; becauſe he is in of another eſtate. F.N.B. 1.

The father in by tort, the heire by remitter, the Feme not endowed.

62 If a man hath title of action to recover land, and after he enters, and diſſeiſeth the Tenant of the land, and dieth ſeized, by which his heir enters; here, the heir is remitted to the title that his Anceſtor had, and the Feme of the Baron that ſo dieth ſeized, ſhall loſe her dower; becauſe that eſtate which the Baron had, is determined; for that was an eſtate of fee by tort, and the heire hath an eſtate of fee, which was in his Anceſtor by right, &c. F.N.B. 1.

Feme not endowed of the rents, but of the land.

63 If a man make a gift in taile, reſerving rent to him and his heirs, and after the Donor taketh Feme, and dieth, and the Tenant in taile alſo dies without iſſue; Here, the Feme of the Donor ſhall not be endowed of the rent, becauſe the rent is extinct; for it was reſerved upon an eſtate taile, which is determined: But in this caſe, albeit the eſtate taile of the rent is determined, yet ſhall the Feme be endowed of the land; becauſe that doth ſtill continue, and is not determined, as is the rent. F.N.B. 149

A remainder muſt have an eſtate to ſupport it.

64 By the rule of the Law a remainder ought to have a preceding eſtate to ſupport it: And if that preceding eſtate faile, the remainder fails alſo; As if a leaſe for life had been made to a Monk, the remainder in fee, this remainder had been void; becauſe the Monk had no capacity to take the eſtate for life, and ſo the eſtate preceding, the remainder is void, and then (ex conſequente) the remainder is void alſo. Pl. Co. 35. a. *Colthrift's* ca.

Appropriation diſappropriate.

65 A Church appropriated to a ſpiritual Corporation, becometh diſappropriate, if the Corporation be diſſolved. Finch 14. 3 E. 3. 74. b.

Ancient Demeſn reſtored.

66 A diſſeiſor of Lands in ancient Demeſn, the Lord confirms unto him to hold at the Common Law, the Diſſeiſee re-entreth; Now ſhall the land be ancient Demeſn again; for the eſtate, whereupon the confirmation ſhould enure, is deſeated. Finch 14. 49 E. 3. 8.

Abſq; impetitione vaſti determined.

67 The priviledg of Abſque Impetitione vaſti is annexed to the priviſty of the Eſtate, (3 E. 3. 44. per Shard and Stove) ſo that if the eſtate, unto which that priviledg is annexed, be changed, the advantage of that priviledge is loſt (5 H. 5. 9. a.) And therefore if a man make a leaſe for years without impeachment of waſt, and after confirms the land to him for life, he ſhall be ever after chargeable with waſte, 28 H. 8. Dyer 10. b. If a leaſe be made to one *pur auter vie*, without impeachment of waſt, the remainder to him for the term of his own life; Now is he puniſhable of waſt, for the firſt eſtate, unto which the advantage of Abſque impetitione vaſti was annexed, is drowned and gone, and therefore that priviledge is gone alſo: So if it is likewiſe of a Confirmation, &c. Co. l. 11. 83. b. *Bowles* caſe.

Priviledge of *Tenancy* by the courteſie loſt by alienation.

68 It was adjudged in the caſe of one Ewens, M. 28. & 29 Eliz. that where the Tenant in taile after poſſibility of iſſue extinct grantes over his eſtate, the Grantee was forced in a Quid juris clamat to attorn; becauſe by the aſſignment that priviledge was loſt; And this judgement was affirmed in the Kings Bench in a Writ of Error, and with it alſo agrees 27 H. 6. tit. Aide in Statham. Co. *ibid.*

No prohibition of waſt by the alienee of the heire againſt tenant in dower.

69 The heire at the Common Law ſhall have a prohibition of waſt againſt Tenant in Dower; but if the heire grant over the reverſion, his Grantee ſhall not have it; for it appears in the Regiſter, fol. 72. that ſuch an Aſſignee in an action of Waſt againſt Tenant in Dower ſhall recite the Statute of Gloceſter; and then (by conſequent) he ſhall not have prohibition of Waſt at the Common Law, for then he ſhould not recite the Statute. Vide F.N.B. 55. 14 H. 4. 3. 5 H. 7. 17. b. Co. *ibid.*

70 If

Co. Inſt. pars 1 12. b. 4.

70 If a man be ſeized of lands as heire of the part of his mother, and maketh a feoffment in fee, and taketh back an eſtate to him and his heirs, this is a new purchaſe; and if he die without iſſue, the heirs of the part of the father ſhall firſt inherit; becauſe the eſtate, unto which the property of deſcending to the heirs of the part of the mother, being by the change of the ſame eſtate deſtroyed, that property it ſelfe is alſo deſtroyed. So likewiſe if a man ſo ſeized maketh a feoffment in fee, reſerving a rent to him and to his heirs, this rent ſhall goe to the heirs of the part of the father, &c. Priviledg loſt by a purchaſe of the land.

Co. ibid. 83. a. 2. Co. l. 4. 88. in *Luthrels* caſe.

71 If there be Lord and Tenant by Caſtle-guard, and the Lord granteth over his Seignory to another; In this caſe, the Caſtle-guard is gone, becauſe the Grantee hath not the Caſtle, which is the ground of the ſervice: For the ſame reaſon it is, that if one holdeth of me as of my Manor of D. by fealty and ſuit of Court, if I grant over the ſervices of this Tenant, the ſuit is gone, becauſe the Grantée hath not the Manor: But if the Caſtle be wholly ruinated, Si caſtrum ſit penitùs dirutum, yet the tenure remaineth by Knight ſervice, and it goeth in benefit of the Tenant, as to the guarding of the Caſtle, untill it be re-edified; but ward and marriage belongeth unto the Lord in the meane time. Caſtle-guard gone by alienation.

Co. Inſt. pars 1. 53. b. 4.

72 After Waſte done, there is a ſpecial regard to be had to the continuance of the reverſion in the ſame ſtate, that it was in at the time of the Waſte done; for if after the Waſt committed, the reverſion granteth it over, though he taketh back the whole eſtate again, yet is the Waſt diſpuniſhable; So likewiſe if he grant the reverſion to the uſe of himſelfe and his wife, and to his heirs, yet the Waſt is diſpuniſhable, and ſo of the like; becauſe the eſtate of the reverſion continueth not, but is altered, and conſequently the Action of Waſt for Waſt done before, (which conſiſts in privity) is gone alſo. Waſt made diſpuniſhable.

Co. l. 5 28. a. 3. in *Middletons* caſe.

73 An Executor before probat may releaſe an action, albeit before probat he cannot bring an action; for the right of action is in him: So alſo if two Executors prove the Will, and the third refuſe, yet he may releaſe: It is otherwiſe of an Adminiſtrator; for if A. releaſe, and after take adminiſtration, that ſhall not barre him; becauſe the right of action was not in him at the time of the releaſe made. Executor may releaſe before *probat*, not the Adminiſtrator.

Co. Inſt. pars 1 76. b. 3.

74 If there be Lord and Tenant, and the Tenant maketh a feoffment in fée of Lands holden by Knight ſervice to the uſe of the Feoffée and his heirs, untill the Feoffor pay unto the Feoffée or his heirs 100 l. at a time and place limited; the Feoffée dyeth, his heire within age; Here, the Lord ſhall have the wardſhip of body and lands conditionally: For if the Feoffor pay the money, and enter into the land, the wardſhip of both body and lands is diveſted. Vide pro ibid. A conditional wardſhip deveſted.

Dyer 155. Pl. 20 4, 5. P. M.

75 A. by Indenture enrolled in Chancery in conſideration of money, bargains and ſels to B. the Manor of D. to have and to hold to B. and his heirs, to the uſe of A. for life, the remainder to the uſe of B. in taile: Here, becauſe the firſt grant to B. is an uſe by the Statute of 27 H. 8. and one uſe cannot be engendred out of another, the limitation of the two laſt uſes was adjudged void. Uſe upon an uſe.

Dyer 186. 1. 2, 3 Eliz.

76 A man gives land to two, habendum eis pro termino vitæ eorum, & eorum alterius diutiùs viventis, ad uſum A. B. pro termino vitæ ſuæ, without more, and the two Leſſées die: In this caſe, it ſeemed to the Court of Common Pleas that the eſtate was determined, becauſe the eſtate upon which the uſe was created and raiſed was gone, &c. But Quære, if ſuch an eſtate had been made before the Statute of 27 H. 8. of uſes. *Ceſtuy que uſe.*

Dyer 205. 7. 3, 4 Eliz.

77 A writ of extent was awarded in the time of Queen Mary, returnable Quindena Martini, and the Writ is executed in the life of the Queen; but before the return ſhe dies, and yet it was returned, and a liberate Extent.

was

was thereupon granted in the time of Queen Eliz. Quære, whether or no the Extent was returned without warrant.

Error. 78 In debt the Judgment was reversed, because there was no warrant of Attorny entred, and this albeit the Writ of Error was brought the same terme, the record remaining still in the breasts of the Justices, and the Plaintiff had prayed entry thereof: Note, that both the first Action and the Writ of Errour were brought in Banco Regis. Dyer 130. 58. 6 Eliz.

Lease void. 79 The Provost of Weis being Parson imparsonee of the Parsonage of Winsam, leaseth the tithes for fifty years rendring rent, which was also confirmed by the Deane and Chapter, but not by the Patron and Ordinary, the Provostship was by Parliament united to the Deanary, cum primo vacare contigerit. The Provost dies, the Deane accepts the rent, yet the lease is not affirmed by such acceptance, for the Provosts lease was void by his death, as it is of a Parson or Prebend; It was otherwise of a Bishop, Deane, Abbot, &c. which were elective, and (before the Statute of 1 Eliz. not printed) might make discontinuance; but if the lease above had been for life, it had not been void before entry: Also the acceptance above was to no purpose, for the reversion was determined, and the name of succession altered; As if Tenant in Dower or other particular Tenant make a lease and die, and he in reversion or remainder accept the rent, this is no affirmation, because the reversion is altered. Dyer 239. 40. 7 Eliz.

80 Pob. 10 Doctor Leyfield against Tisdale.

41 Things incident are adhærent to their Superiours, or Principals.

Deeds, &c. in whose custody to remain. 1 A man seised of Lands in fee hath divers Charters, Deeds, and Evidences, and maketh a feoffment in fee either without warranty, or with warranty onely against him and his heirs; In this case, the Purchaser shall have all the Charters, Deeds, and Evidences, as incident to the lands, & ratione terræ, to the end he may the better defend the land himself, having no warranty to recover in value; for the evidences are (as it were) the limbs of the land, and the Feoffor being not bound to warranty, hath no use of them: But if the Feoffor be bound to warranty, so that he is bound to render in value, then is the defence of the title at his perill: and therefore the Feoffee in that case shall have no deeds that comprehend warranty, whereof the Feoffor may take advantage: Also he shall have such Charters as may serve him to derain the warranty paramount. Likewise he shall have all Deeds and Evidences, which are materiall for the maintenance of the title of the land; but other evidences, which concern the possession, and not the title of the land, as Court Rolls, &c. the Feoffee shall have them, as concomitantia & incidentia to the possession. Co. inst. part 1. 6. a. 2. The Lord *Buckhurst's* case. Co. l. 1. 1, & 2.

Land on the part of the mother. 2 If a man seised of Lands as heire of the part of his Mother, maketh a feoffment in fee, reserving a rent to him and to his heirs, this rent shall go to the heirs of the part of the Father (vide N.B. 40. 70.) but if he had made a gift in tayle, or a lease for life, reserving a rent, the heire of the part of the Mother shall have the reversion, and the rent also, as incident thereunto, shall passe with it; but the heire of the part of the Mother shall not take advantage of a condition annexed to the same, because it is not incident to the reversion, nor can passe therewith. Co. Inst. part 1. 12. b. 4.

The like for service. 3 If a man had been seised of a Mannor, as heire on the part of his Mother, and before the Statute of Quia emptores terrarum had made a feoffment in fee of parcell, to hold of him by rent and service, albeit they be newly created, yet for that they are parcell of the Mannor, they shall with the rest of the Mannor descend to the heirs of the part of the Mother, Co. ibid.

Mother, quia multa tranſeunt cum univerſitate, quæ per ſe non tranſeunt.

Co. ibid. 4 If a man hath a Rent-ſeck of the part of his Mother, and the Tenant of the land granteth a Diſtreſſe to him and his heires, and the Grantee dieth, the Diſtreſſe ſhall go with the rent to the heir of the part of the Mother, as incident or appurtenant to the rent; for now is the Rent-ſeck become a Rent-charge. The like for diſtreſſe.

Co. ibid. 19. b. 3. 5 By the Statute of Weſtm. 2. the land is as it were appropriated (or incident) to the Tenant in tail, & to ỹ heirs of his body; and therefore if an eſtate be made either before or ſince the Statute of 27 H. 8. cap. 10. to a man and the heirs of his body, either to the uſe of another and his heirs, or to the uſe of himſelfe and his heirs, this limitation of uſe is utterly void; for before the ſaid Statute of 27 H. 8. he could not have executed the eſtate to the uſe: And ſo it was adjudged in an Ejectione firmæ between Cooper Plaintiff, and Franklin, &c. Defendant, The land incident to the tenant in tail.

Co. ibid. 22. b. 3. 6 The poſſibility of having heirs to inherit is ſo inherent and incident to a man as long as he lives, that it cannot by any act of his be ſevered from him during his life, except when his blood is corrupt by attainder, &c. And therefore at this day, ſince the Statute of 27 H. 8. cap. 10. If a man ſeiſed of lands in fee make a feoffment in fee, and depart with his whole eſtate, and limit the uſe to his daughter for life, and after her deceaſe to the uſe of his ſonne in tatle, and after to the right heirs of the Feoffor: In this caſe, although he departed with the whole Fee-ſimple by the feoffment, and limited no uſe to himſelfe, yet hath he a reverſion; for whenſoever the Anceſtor takes an eſtate for life, and after a limitation is made to his right heirs, the right heirs ſhall not be purchaſers: And here in this caſe, when the limitation is to his right heirs, and right heirs he cannot have during his life (for, non eſt hæres viventis) the Law doth create an uſe in him during his life, untill the future uſe cometh in eſſe, and conſequently the right heirs cannot be purchaſers; And there is no diverſity when the Law creates the eſtate for life, and when the party: And if the limitation had been to the uſe of himſelfe for life, and after to the uſe of another in tatle, and after to the uſe of his own right heirs, the reverſion of the fee had been in him, becauſe the uſe of the fee continued ever in him; And the Statute doth execute the poſſeſſion to the uſe in the ſame plight, quality, and degree, as the uſe was limited. A remainder to a mans right heirs is a limitation to himſelfe.

T. 23 Eliz. *Fenwick* and *Mitfords* caſe.

Co. Inſt. pars 1 22. b. 4. 7 If a man make a gift in tatle, or a leaſe for life, the remainder to his own right heires, this remainder is void, and he hath the reverſion in him; for the Anceſtor, during his life, beareth in his body (in judgement of Law) all his heirs; and therefore it is truly ſaid, that hæres eſt pars anteceſſoris: And this appeareth in a common caſe; for if Land be given to a man and his heirs, all his heirs are ſo totally in him, that he may give the land to whom he will. Void remainder.

Co. ib. 23. a. 4. 8 Albeit Tenant in Frankmarriage is eſteemed in Law a free tenure, till the fourth degree be paſt, yet the Donées in Frankmarriage ſhall immediately make fealty; becauſe fealty is incident to every tenure (except Frankalmoigne), and cannot be ſeparated from it. Frankmarriage. Fealty.

Co. ib. 47. a. 3. 9 If a man make a leaſe for years, and reſerve a rent to him and his Executors, the rent ſhall end by his death, becauſe the heire hath the reverſion, and the rent is incident to the reverſion. Rent incident to the reverſion.

Co. ib. 68. a. 1. 10 Fealty is incident to Homage, becauſe it is a part of Homage, all the words of Fealty being comprehended within Homage. Mirror cap. 3. Fealty.

Co. ib. 69. a. 1. 11 As fealty is incident to Homage, ſo Homage and Knight ſervice are incident to Eſcuage, and by the grant of ſervices Eſcuage paſſeth with the reſt. Fealty, Homage, &c.

12 If

Wardſhip of the Donee incident to the Donor.

12 If Tenant by Knight ſervice maketh a gift in taile, and the Donée maketh a Feoffment in fée, and the Donée dieth his heire within age, the Donor ſhall have the Wardſhip of him; becauſe he is his Tenant in right: But if the Feoffée die, his heire within age, the Donor ſhall not have the Wardſhip of his heire, but the Lord paramount; becauſe he is Tenant in fait to him: Neither ſhall the Donor avow upon the Feoffée or his heire, for the ſervices due unto him; becauſe he muſt in his Avowry ſhew the reverſion in fée to be out of him by the Feoffment, and conſequently the ſervices incident to the reverſion are alſo out of him, but he ſhall avow upon the Donée and his iſſue: And thus are all books that ſeem to be at variance either anſwered, or reconciled. Co. ibid. 77. a. 1. in Sir *Thomas Wiats* caſe. T. 18 Eliz. in C. B. *per Cur.*

Tenure.

13 There can be no tenure without ſome ſervice; becauſe the ſervice maketh the tenure, and is incident unto it. Co. ibid. 92. b. 1.

All ſervices but Fealty ſeverable.

14 Of Incidents there be two ſorts, viz. ſeparable and inſeparable; ſeparable, as rents incident to reverſions, &c. which may be ſevered: Inſeparable, as fealty to a reverſion or tenure, which cannot be ſevered: For, as all lands and tenements within England are holden of ſome Lord or other, and either mediately or immediately of the King, ſo to every tenure (at the leaſt) fealty is an unſeparable incident, ſo long as the tenure remains, and all other ſervices, except fealty, are ſeverable. Co. ib. 93. a. 1.

Incident tenures, &c.

15 The tenure in Frankalmoigne is an incident to the inheritable bloud of the Grantor, and cannot be transferred or forfeited to any other, no more than a founderſhip of an houſe of Religion (which is intended to be in Frankalmoign) or Homage Anceſtrell, or the writ of contra formam Feoffamenti, or the writ of contra formam Collationis, or any other incident to their inheritable bloud: but it is no incident inſeparable; for the Lord may releaſe to the Tenant in Frankalmoigne, and then the tenure is extinct, and he ſhall hold of the Lord paramount by fealty, as in the caſe of Littleton, Sect. 139. Co. ibid. 99. a. 4.

Diſtreſſe incident to fealty.

16 If rent-ſervice be behind, the Lord may diſtrain for the arrears, becauſe fealty is incident to rent-ſervice, and where fealty, &c. is incident to the rent, there is a diſtreſſe alſo incident thereunto. Co. ibid. 142. a. 3.

To leaſe Fealty inſeparable, Rent not inſeparably incident.

17 In the caſe of a gift in taile, leaſe for life, or years, the fealty is an incident inſeparable to the reverſion, ſo as the Donor or Leſſor cannot grant the reverſion over, and ſave to himſelfe the fealty or ſuch like ſervice; but the rent may be excepted, becauſe the rent although it be incident to the reverſion, yet is it not inſeparably incident. Co. ibid. 143. a. 1.

Fealty incident.

18 If a man maketh a gift in taile without any reſervation, the Donée ſhall hold of the Donor by the ſame ſervices that he holds over; but otherwiſe it is of an eſtate for life or yeares; for there if he reſerveth nothing, he ſhall have fealty only, which is an incident inſeparable to the reverſion. Co. Inſt. pars 1. 143. a. 2.

Releaſe of land except the ſaid rent.

19 If there be Lord and Tenant by fealty and rent, and the Lord by his deed reciting the tenure, releaſeth all his right in the land, ſaving his ſaid rent; In this caſe, the Seigniory remains, and he ſhall have the rent as a rent ſervice, and alſo the fealty incident unto it; for in ſaying, the ſaid rent, it is as much as if he had ſaid, the rent ſervice, whereunto fealty is incident. Co. ib. 150. a. 3. & 4.

Grant of ſervices, *quid operatur.*

20 If the Donée hold of the Donor by fealty and certain rent, and the Donor grant the ſervices to another, and the Tenant attorne, ſome have ſaid, the rent ſhall not paſſe; becauſe the rent cannot paſſe but as a rent ſervice, being granted by the name of ſervices: And the fealty cannot paſſe; becauſe it is an incident inſeparable to the reverſion: But it ſeemeth that the rent ſhall paſſe as a Rent-ſecke; becauſe at the time of the grant it was a rent ſervice in the Grantor, and therefore there be words ſufficient to paſſe it to the Grantée; and it is not of neceſſity, Co. ibid. 150. b. 1.

that it ſhall be a Rent-ſervice in the hands of the Grantée, &c.

Co. ibid. 148. b. 3. 21 If a man maketh a leaſe for life of Black acre, and White acre, reſerving two ſhillings rent, upon condition that if the Leſſee doth ſuch an act, &c. that then he ſhall have fee in Black acre, the Leſſee performs the condition; Here, albeit by relation he hath the fee-ſimple ab initio, yet ſtill the rent be apportioned, for that the reverſion of one acre, whereunto the rent was incident, is gone from the Leſſor. *Accruen Rent apportioned.*

Littl. §. 225. Co. ib. 150. a. 22 If there Lord and Tenant, and the Tenant holds of the Lord by fealty and certain rent, and the Lord grants the rent by his deed to another, &c. reſerving the fealty, and the Tenant attorns to the Grantée of the Rent; Here, ſuch a rent in the hands of the Grantée is not Rent-ſervice, but Rent-ſeeke; becauſe the power of diſtraining remains ſtill with the Lord, as an incident to the fealty, which he hath reſerved, &c. So it is likewiſe where the Tenant holds by homage, fealty, and rent, and the Lord grants the rent, reſerving the Homage, &c. but in this laſt caſe, if the Lord grant away the Homage, ſaving unto himſelfe the reſt of the ſervices, and the Tenant attorn, &c. In this caſe, the Tenant ſhall hold the land of the Grantée, and the Lord ſhall have the Rent, but as a Rent-ſeck, and ſhall not diſtrain for it; becauſe the power of diſtraining both (of common right) go along with the Homage and Fealty, Fealty being an inſeparable incident to Homage, and Diſtreſſe the like to Fealty, &c. *Diſtreſſe incident to fealty, and fealty to homage.*

Littl. §. 226, 227. Co. ibid. 150. b.

Co. ibid. 68. a. 1.

Co. ibid. 151. b. 1. 23 Incidens is a thing appertaining to, or following another as a more worthy or principall. *Definitio.*

Littl. §. 228. Co. ib. 151. b. 3, 4. 24 If a man let lands to another for terme of life, reſerving rent, if he grant the rent, &c. ſaving the reverſion, &c. the Grantée hath the Rent as a Rent-ſeek, for which he cannot diſtrain; becauſe the fealty (unto which the Diſtreſſe is incident) doth ſtill remain in the Grantor, as an inſeparable incident to the reverſion; for, albeit the rent be alſo incident to the reverſion, yet it is ſeparably incident, whereas Fealty is inſeparably incident unto it; ſo that although, when the rent was firſt reſerved, it was Rent-ſervice, and ſo by conſequent had Fealty and diſtreſſe incident unto it, yet being now by the grant ſevered from the reverſion and Fealty, it hath loſt the privilege of diſtreſſe, which always inſeparably adheres to the Fealty, &c. Nevertheleſſe, in the ſaid caſe, if the Leſſor grant the reverſion for life, &c. the rent ſhall paſſe therewith as incident to the reverſion, and the Grantée ſhall then have it as a Rent-ſervice, whereunto Diſtreſſe is incident, becauſe it then paſſeth by the grant of the reverſion, as with the ſuperiour or principall, and that without uſing theſe words in the Grant, cum pertinentiis, &c. *Rent ſeparably, fealty inſeparably incident to the reverſion.*

Co. ibid. 192. a. 3. & 214. a. 2. 25 If two Joyntenants make a leaſe for life, reſerving a rent to one of them, the rent ſhall enure to them both, becauſe the reverſion remains in Joynture; and therefore the rent, which is incident to the reverſion ſhall alſo enure in ſoynture, &c. unleſſe the reſervation be by deed indented; for then he unto whom it is reſerved, ſhall have it, &c. ſo alſo a ſurrender to one ſhall enure to both. *Jointenants.*

Littl. 348. Co. ib. 215. b 3. 26 If there be Lord and Tenant, and the Tenant make a leaſe for life, reſerving to him and his heirs an annual rent, &c. and after the Leſſor dies without heire, ſo that the reverſion falls to the Lord by way of Eſcheat, and the rent of the Tenant for life is behind; In this caſe, the Lord by Eſcheat may diſtrain for the Rent arrear, albeit it was reſerved to the Leſſor and his heirs; for both Aſſignees in Deed, & Aſſignees in Law ſhall have the rent; becauſe the rent being reſerved of inheritance to him and his heirs, is incident to the reverſion, and goeth with the ſame. *Rent incident to the reverſion.* *Eſcheat.*

Co. ibid. 223. b. 4. 27 Albeit (as Littleton ſaith, Sect. 362.) a Tenant in tails may by condition be barred from making any alienation and diſcontinuance of his *Tenant in t barred by co dition, & ho not.*

his eſtate contrary to the Statute of Weſtm. 2. yet cannot that eſtate be ſo clogged by a condition, that the incidents which are by Law annexed unto it, may be barred or ſevered from it. Now the incidents to an eſtate taile are, 1 To be diſpunishable of waſte. 2 That the Feme of the Donée ſhall be endowed. 3 That the Baron of the Feme Donée (after iſſue) ſhall be Tenant by the Courteſie. 4 That the Tenant in taile may ſuffer a common recovery: And therefore if a man make a gift in taile, upon condition to reſtrain the eſtate from having any of theſe incidents, the condition is repugnant and void in Law: And for this cauſe it is, that a Collateral or lineall warranty with aſſets, in reſpect of the recompence, is not reſtrained by the Statute of Donis conditionalibus, no more is a common recovery in reſpect of the intended recompence: And Littleton there to the intent to exclude the common recovery, ſaith, Fiel alienation & diſcontinuance; joyning them together. Co. l. 6. 41. a. 1. Sir *Anthony Mildmayes* caſe & 42. b. 4. & l. 10. 38. b. 4. *Mary Portington's* caſe.

Deſcriptio inclientium.

28 They that have Conuſance of any thing, are to have Conuſance alſo of all incidents and dependants thereupon; For, an incident is a thing neceſſarily depending upon another. Vide 94. Co. ibid. 227. b. 4.

Stat. 21. H. 8. 19.

29 By the Statute of 21 Hi. 8. cap. 19. it is enacted, That if the Lord ſhall diſtrain upon the Lands and Tenements holden, &c. that he may avow, &c. upon the ſame lands, &c. as in lands, &c. within his Seignory, &c. without naming of any perſon certaine, and without making avowry upon a perſon certain: Here, albeit the purview of this act be generall, yet all neceſſary incidents are to be ſupplyed, and the ſcope and end of the Act to be taken; And therefore although he need not to make his avowry upon a perſon certain, yet he muſt allledge ſeiſin by the hands of ſome tenant certain within forty years, &c. Co. ibid. 368. b. 1.

Incidens ſervitiſ not be diſcharged without ſpecial words.

30 If there be Lord and Tenant, and the Tenant holds of his Lord by the ſervice of Fealty and 2 s. rent, if the Lord by his Deed confirme the eſtate of his Tenant to hold for xii d. or for a penny, &c. In this caſe (ſaith Littleton, Sect. 538.) the Tenant is diſcharged of all the other ſervices, and ſhall pay the Lord nothing, but what is compriſed within the ſame confirmation: Nevertheleſſe, theſe words are thus to be underſtood, that the Tenant ſhall not render any more rent or manuall ſervice to the Lord, than is contained in the Deed; but other things, notwithſtanding the ſaid confirmation, the tenant ſhall yield to the Lord, as reliefe, aide pur file marier and aide pur faire fitz Chivalier; becauſe theſe are incidents to the tenure, which do ſtill remaine, and ſhall not be diſcharged without ſpecial words, by the generall words of all actions, ſervices, and demands. Co. Inſt. part 1. 305. b. 3.

The like.

31 If a man hold of me by Knight-ſervice, Rent-ſeiſit, &c. and I releaſe to him all my right in the Seignory, excepting the Tenure by Knight-ſervice, or confirme his eſtate to hold of me by Knight-ſervice onely, for all manner of ſervices, exactions, and demands; yet ſhall the Lord have Ward, Mariage, Reliefe, Aide pur file marier, & pur faire fitz Chivalier; for theſe be incident to the Tenure, which doth ſtill remaine. Co. ibid.

The rent paſſeth with the reverſion, but non è converſo.

32 Where a Leaſe for terme of yeares or life, or a gift in taile is made to a man, reſerving rent, &c. if the Leſſor or the Donor grant the reverſion to another, and the Tenant attorne, the rent paſſeth to the Grantee; albeit the Deed of the grant of the reverſion make no mention of the rent; becauſe the rent is incident to the reverſion, but not è converſo; for if a man in this caſe will grant the rent, ſaving the reverſion, albeit the Tenant attorne, yet that rent is but a rent-ſecke, &c. Co. lib. 3. 17. a. 1. Litt. § 572.

Co. ibid. 319. a. 3. 9 H. 6. 16. The Deane of *Pauls* case. 20 Eliz.

33 If the Lessee maketh Tenant for life; or gate Tenant for yeares, and maketh a Feoffment in fee, by this the rent is reserved upon the Lease for life or yeares is not extinguished; but by the regrelle of the Lessee the rent is revived, because it is incident to the reversion. And so it hath been adjudged. But if a man be seised of a rent in fee, and diffeise the Tenant of the land, and make a Feoffment in fee, the Tenant re-entreth; this rent is not revived: Note a diversity between a rent incident, and a rent not incident to a reversion, &c.

A rent incident or not incident to a reversion. Diversity.

Littl. §. 590, 591. Co. ibid. 324.

34 If I be seised of a Manor, parcel in demesne and parcel in service, and I give certaine acres of land, parcel of the demesnes to another in tayle, reserving rent; in this case, if I be disseised of the Manor, and all the Services attorne, and pay their rents to the Disseisor, and the Donee in tayle also pay to him the rent by the reservation, after the Disseisor dies, and his heire is in by descent; yet in this case I may well distraine the Tenant in tayle and his heires for the rents by me reserved; because the rent reserved is incident to the reversion, and the reversion of the land given in tayle is in me notwithstanding the disseisin and descent: for as long as the Donee in tayle is in possession, he preserves the reversion in the Donor, and so long as reversion continues in the Donor, so long do the rents and services (as incident thereunto) belong to the Donor; neither can the Donee be put out of his reversion, unlesse the Donee be put out of his possession, and if the Donee is put out of his possession, consequently is the Donor put out of his reversion: But if the Donee marks a regresse and regaines his estate and possession, thereby both he ipso facto vests the reversion in the Donor, &c. There is the same reason of a Lessee for life or yeares, rendring rent, &c.

Rent incident to the reversion. A Donor cannot be ousted of it.

Co. l. 3. b. 4. The Marquess of *winchesters* case.

35 He that hath a remainder expectant upon an estate tayle, shall have a writ of Error upon a Judgement given against the Tenant in tayle, albeit there were no such remainder at the Common Law, for when the Statute de donis conditionalibus speaketh of the Donee to make a remainder upon an estate tayle, all those words (the Common Law gave to the Donee, as by the gift, the Statute supplies nothing) but only alters the nature of the Common Law: And therefore as this is a reversion of a remainder expectant upon an estate for life, shall have a writ of Error by the Common Law upon a Judgement given against Tenant for life although they were not named parties by writ, prayer, voucher, or receipt, as the Statute de donis conditionalibus shall have, this is a reversion of a remainder expectant upon an estate tayle.

Sometimes to be brought by the Reversioner, sometimes not.

Co. l. 4. 8. b. 3. *Bevils* case.

36 The seisin of a superiour Lord is seisin of all inferiour services, incident unto it, as seisin of Homage is seisin of Fealty, and seisin of Homage is seisin of Fealty, and seisin of Rents is seisin of Fealty, where the Seignory is by Fealty and Rent.

Superiour service seisin of inferiour.

Co. l. 4. 23. a. 1. *Beal & Ridens* case.

37 Where (by the customs of Copiholds Plaints in Nature of Writs may be in the Court of the Manor in the nature of real actions; if a recovery in such a plaint be had against Tenant in tayle (admitting that Copihold lands may be intailed) that recovery shall work a discontinuance, and shall take away the entry of the issue in tayle, for sith such Plaints in the nature of real actions are warranted by the custome, this is an incident, which by the Law annexeth to the said customes, viz. that such recovery shall make a discontinuance; which agreeth with the reason of the principall point in Brownlowes case, Co. l. 4. 2. a. And the like judgement was given in B. R. M. 35 & 36 Eliz. betwixt *Cheney* and *Veale*, Rot. 1417.

Plaints in a copihold are to bar the issue in tayle.

hold ſe-
ral by cu-
me, conti-
e ſeured,
his ſurren-
d together
one copy.

38 If a Copiholder is ſeiſed by force of ſeveral Copies, viz. of Black acre by 4d rent, of White acre by vj d. and of Green acre by xij d. rent, and he makes waſte in part of Black acre, or makes feoffment of it, or denies the rent of it, whereupon Black acre is forfeited; This is no forfeiture of White acre, or Green acre; for although they are all in one and the ſame hand, yet every of them is ſeverally holden, and to every acre there is a ſeverall condition (as an incident) implicitely annexed unto it, ſo that the forfeiture of one cannot be the forfeiture of any of the other; becauſe the ſeverall conditions in Law do diſſolve the ſeverall tenures: So likewiſe if the Copiholder of the ſaid three acres ſurrender them altogether in one ſurrender to the uſe of A. and his heirs, and the Lord admit A. accordingly, Tenendum per antiqua ſervitia, inde prius debita & de jure conſueta, or to the like effect, and A. commits forfeiture in Black acre, he ſhall forfeit onely that, and neither of the other; For the ſaid Tenendum (reddendo ſingula ſingulis) continues the ſeverall tenures; In like manner, if divers ſeveral Copiholds eſcheat to the Lord, and he re-grant them to another, Tenendum per antiqua ſervitia, &c. they ſhall be ſeverally holden, as they were before the Eſcheat, &c. Co. l. 4. 27. a. 4. *Taverners* caſe *per Cur.* Co. ibid. 28. a. 2.

Several times
for ſeveral
copies.

39 If a man hath ſeverall Copihold lands holden by ſeveral ſervices, the Lord ought to alleſſe and demand fines ſeverally for each parcell ſo ſeverally holden; For, the Tenant may refuſe to pay the fine for one parcell and forfeit it, and may pay the fines for the other; becauſe every ſeverall tenure hath a ſeverall condition in Law (as an incident) tacitè annexed unto it; And therefore the Lord ought for every ſeverall tenure to alleſſe and demand a ſeverall fine. Co. l. 4. 28. a. 1. *Hubbert* and *Hamonds* caſe.

The office of
Sheriffclerk
incident to the
Sheriffs office.

40 Queen Eliz. grants to one Mitton the office of Clerk of the County Court, or the Shire Clerk of the County of Somerſet with all fees, &c. for terme of his life, and after the Queen makes Arthur Hopton High Sheriffe of the ſame County, who interrupts Mitton, claiming that which was granted to him, as a thing incident to his office of Sheriffe, &c. And it was adjudged, that the County Court, and the entering of all the proceedings in it, are ſo incident to the office of Sheriffe, that they cannot by Letters Patents be divided from it; and albeit the ſaid grant was made to Mitton, when the office of Sheriffe was void; yet when the Queen makes a new Sheriffe, he ſhall adde it, &c. Co. l. 4. 33. a. 3. *Mittons* caſe.

Exigenter in-
cident to the
chief Juſtice.

41 Tempore vacationis, of the office of Chiefe Juſtice of the Common Pleas, Queen Mary, grants the office of the Exigenter of London to one Scrogge, and it was holden void; becauſe it was incident to the office of Chiefe Juſtice of the County, which the Queen could not hade; Alſo therefore the next Chiefe Juſtice ſhall avoid it, &c. Co. ibid. 2 El. Dyer 175.

Gaoles inci-
dent to She-
riffs.

42 Many maps (by the King) of the cuſtody of the Gaoles of Counties were void, becauſe the cuſtody of Gaoles of Counties of right do belong and are by the Law annexed, incident to the office of Sheriff, as doth very well appear by the judgement in Parliament, Anno 14 E. 3. cap. 10. by which it is ordained, that all Gaoles of Counties ſhall be reſpondent to the Sheriffs, and that the Sheriffs ſhall again have the cuſtody of the ſame Gaols, as in times paſt was uſed, and that they ſhould put in ſuch Gaolers, for which they ſhould anſwer, &c. Co. l. 4. 34. a. 1. in *Mittons* caſe, *per tous les juſtices.*

Where a co-
venant binds
and where
not, betwixt
Leſſor and
Leſſee.

43 If a Deviſe of Land, when a Covenant extends to a thing in eſſe, parcel of the Deviſe, the thing to be done by force of the Covenant; it ſhall paſſe by the Deviſe, as incident and appurtenant to the thing demiſed, and ſhall paſſe with the Land, and ſhall alſo bind the Aſſignee, although he be not named by expreſſe words. But when the Covenant extends to a thing, which hath not eſſence at the time of the Deviſe made, that which hath not eſſence, cannot in Law be incident or annexed to the thing demiſed, and therefore in that caſe the Aſſignee ſhall not be bound to it, unleſſe it be named. As if the Leſſee covenant to repaire the houſes, Co. l. 5. 16. a. 4. *Spencers* caſe.

houſes, &c. this is parcell of the contract, and extends to the ſupportation of the thing demiſed, and therefore is quodam-modo incident and annexed to the houſes, and ſhall binde the Aſſignée, although he be not expreſſly bound by the covenant; But if the covenant be, to build a brick-wall upon parcell of the land demiſed, or the like, which was not in eſſe at the time of the demiſe made, but was to be done afterwards, this covenant may binde the Covenantor himſelfe, and his Executors or Adminiſtrators, but ſhall never binde the Aſſignee, becauſe the Law will never annex a covenant to a thing which hath not eſſence, &c. It is otherwiſe, if the Covenantor for himſelfe and his Aſſignes covenant to do it; for then the Aſſignes are ſpecially named, &c. Co. 5. 24. a. 4. The Deane and Chapter of Windſor's caſe.

Co. ibid. b. 3.

Co. ibid. 17. a. 4.

44 If a man demiſe or grant land to a Feme for years, and the Leſſe for covenants with the Leſſee to repaire the houſes during the terme, the Feme takes Baron and dies, the Baron ſhall have an action of Covenant, as well upon the covenant in Law by force of theſe words, Demiſe and grant, as alſo upon the expreſſe covenant, becauſe ſuch a covenant runs with the land, and is incident unto it; There is the ſame Law of a Tenant by Statute Merchant, or Statute Staple, Elegit, or of a terme ſold by force of an Execution; for, in that caſe alſo, the Vendée of the terme ſhall have an action of Covenant, as a thing incident to the land, albeit all theſe come to the terme by act in Law, &c. So likewiſe if a man grant to his Leſſee for years, that he ſhall have ſo many Eſtovers, as ſhall ſerve to repaire his houſe, or to burn within his houſe, or the like, during the term; this covenant is as an incident and appertinent, that runs with the land, in whoſe hands ſoever it falls. The like.

Co. l. 5. 47. a. 2. *Franklins* caſe.

45 In a general pardon, when an offence is excepted, all the incidents and dependants thereupon are alſo excepted, whether they be corporall, or pecuniary, &c.

Co. lib. 6. 7. a. 1. *Wheelers* caſe.

46 If the King grant lands in fée, Tenendum de nobis, &c. per ſervitiũ unius roſæ rubæ annuatim, &c. ſolummodo pro omnibus & omnimodis aliis ſerviciis, &c. This tenure is ſocage in chief; and in as much as fealty is incident to every Rent-ſervice, the Law annexeth fealty unto the ſaid rent, and then theſe words, pro omnibus aliis ſerviciis, are to be underſtood of other ſervices, which the Law doth not imply, or add unto the rent; ſo that then the tenure ſhall be by a Roſe and fealty, &c. Fealty incident, though not named.

Co. l. 6. 70. a. 3 Sir *Moyle Finches* caſe.

47 If there be Lord and Tenant by Fealty and Rent, and the Lord diſſeiſes the Tenant of the land, and makes feoffment in fée, by this the Seigniory is extinct; but if a man make a gift in tayle, or a leaſe for life, &c. rendring rent, and diſſeiſe the Tenant in tayle or for life, &c. and make feoffment in fée; There, albeit the eſtate paſſeth to the Feoffée, yet when the Donée or Leſſée re-enters, he ſhall revive the rent, as an incident to the reverſion: There is the ſame Law alſo of a leaſe for years, &c. Seigniory extinct.

Co. l. 7. 4. b. 5. *Calvins* caſe.

48 Ligeance is a true and faithful obedience of a ſubject due to his Sovereign; And this allegiance and obedience is an incident inſeparable to every Subject; for as ſoon as he is born, he oweth by birth-right ligeance and obedience to his Sovereign. Allegiance an Incident.

Co. l. 7. 18. a. 3. *Calvins* caſe.

49 There be regularly (unleſſe it be in ſpecial caſes) three incidents to a ſubject born: 1 That the Parents be under the actual obedience of the King. 2 That the place of his birth be within the Kings Dominion: And 3 The time of his birth is chiefly to be conſidered, for he cannot be a Subject borne of one Kingdome, that was born under the ligeance of a King of another Kingdome, albeit afterwards one Kingdome deſcend to the King of the other. The like.

Co. l. 8. 54. a. 3. *Syms* caſe.

50 If a man be ſeiſed of an houſe in right of his wife, and another grants to the Baron and his heirs to have ſufficient Eſtovers to burne in Eſtovers incident to a houſe.

in the house; In this case the Estovers are incident and appurtenant to the house, and shall descend to the issue of the Baron and Feme: So likewise, if one hath an house of the part of the Mother, and one grant to him and his heires competent house-bote to be burnt in the same house; Here, those Estovers are incident to the house; and therefore, albeit that was a new purchase, yet it shall go with the house to the heirs of the part of the Mother.

Imprisonment incident to a Fine. 51 Unto every Fine imposed in Court, Imprisonment is incident; And therefore in all actions, Quare vi & armis, as Reicous, trespasse, vi & armis, &c. if the Defendant upon judgement given against him, be fined, he shall also be imprisoned; For, when the judgement is, quòd defendens capiatur, that is as much to say, as quòd capiatur, quousque finem fecerit, &c. Co. l. 8. 59. b. 3. *Beecher* case.

A rent incident to a reversion. 52 If a man make a lease of three acres all of equall value per annum, rendring 3 s. rent, and the Lessor grants the reversion of one acre, and the Tenant attorns, the Grantee shall have 12 d. rent; For, albeit there was but one lease, one reversion, and one rent, yet that rent being incident to the reversion, which was severable, shall therefore attend upon the reversion, and upon every part of it. Co. l. 8. 79. b. 3. *Wiat Weilds* case.

Incidents to Corporations. 53 When a body politique is incorporated by prescription by a certaine name, then to implead, or to be impleaded, to grant and purchase, &c. are things incident unto it. Co. lib. 10. 29. b. 4. The case of *Sutons* Hospital.

Incidents inseparable. 54 If the Mones in tallie holds of the Honor by fealty, and the Honor by deed inrolled grants the fealty to the King, that grant is meerly void; because fealty is an incident inseparable to the reversion, as it was holden 26 Ass. Pl. 66. So also if the founder of a Colledge, &c. will grant his Foundership to the King by deed inrolled, that is void; because it is inseparable to the blood, as it was holden, Tempore H. 8. B. R. tit. And therefore if before the Statute of 18 Eliz. cap. 2. (which was to make good all Grants made either by or to the Queen) a grant had been made to the Queen of such inseparable incidents, as of a Foundership, or of such services of Mones in tallie, as aforesaid, that Act would not have made such grants good, because such things are not grantable, &c. Co. lib. 11. 77. a. 3. *Magdalen* Colledge case. Co. l. 11. 78. a. 3. the same case.

Estovers. 55 Estovers or wood granted to be burnt in such an house, shall go to him that hath the house, by whatsoever title he hath it; for one is inseparably incident to the other. 12 Eliz. 381. *Finch* 15.

Fealty. 56 Lord and Tenant by Fealty and Homage, the Lord releaseth his fealty; this is void, for Fealty is incident to Homage. Finch 15. 7 E. 3. 11.

An office. 57 An office of skill and diligence, or an Annuity pro concilio impendendo, cannot be forfeited by attainder of Treason. Finch 15. 12 Eliz. 379.

Court Baron. Faire. 58 A Court Baron is incident to a Manor, and a Court of Pipowders to a Faire: And therefore one cannot grant the Manor or Faire, reserving those Courts, Finch 15. 19 H. 8. Br. Incidents 34.

Castle-guard. 59 Where one holdeth of a man to keepe his Castle, the Lord cannot grant his Castle-guard, reserving his Castle. Finch 15. 31 E. 3. Assise 441.

Covenant incident to the land. 60 It hath been adjudged, that where two Coparceners make partition of land, and the one make a covenant with the other, to acquit her and her heirs of a suit that issued out of the land, the Covenantee aliened; In this case, the Assignee shall have an action of Covenant, albeit he was a Stranger to the Covenant, because the acquit all did run with the land, and was incident unto it, in whose hands soever it should come, 42 E. 3. per Finchden. Co. Inst. part 1. 384. b. 4.

Covenant runs with the land. 61 A. seised of the Manor of D. whereto a Chappel was parcell, a Prior with the assent of his Covent covenanteth by deed inrolled with A. and his heirs to celebrate Divine Service in his Chappel weekly, for the Lord of the said Manor, and his servants, &c. In this case, the Assignees Co. lib. 3. 85. a. 1.

Aſſignees ſhall have an action of Covenant, albeit they were not named, for that the remedy by Covenant doth run with the land, to give damages to the party grieved, and is (as it were) incident and appertenant to the Manor: But if the Covenant had been with a ſtranger to celebrate Divine Service in the Chappel of A. and his heirs, there the Aſſignee ſhall not have an action of Covenant; for the Covenant cannot be annexed to the Manor, becauſe the Covenantee was not ſeiſed of the Manor.

F.N.B. 138. l. 62 In ſome caſe the heire ſhall have an action of Detinue for Charters, albeit he hath not the land, as if I be enfeoffed with warranty, and I enfeoffe another with warranty in fee; Here, my heire ſhall have a Writ of Detinue for the deed, by which I was enfeoffed, to the end he may have the advantage of the warranty, &c. A detinue for charters.

Co. l. 7. 9. b. 1. *Calvins* caſe. 63 Ligeance and obedience on the Subjects part to his Prince, is an inſeparable incident to that power and protection whereby the Prince may command, and ought to defend his Subject; And this ligeance and obedience, which that power and protection thus draweth after them cannot be locall or confined to any certain place or Kingdom, but follows the Subject whatſoever he goeth; And therefore it is truly ſaid, Qui abjurat regnum, amittit regnum, ſed non Regem, amittit patriam, ſed non patrem patriæ, &c. for notwithſtanding the abjuration, he ſtill oweth the King his ligeance, and ſtill remaineth within his protection; becauſe the King, if he pleaſe, may pardon and reſtore him to his Countrey again, &c. Ligeance inſeparably incident in all places to the ſubject.

Litt. § 366. Co. Inſt. pars 1. 227. b. 4. 64 If a man ſeiſed of lands in fee lets them for life without deed, rendring rent with clauſe of re-entry upon non-payment of the rent, whereupon if the Leſſor enter, and the Leſſee bring an Aſſize of Novel Diſſeiſin, the Jurors may finde the matter at large, and the Juſtices ought to adjudge it for the Tenant, albeit (regularly) a condition is not valid without deed ſhewed in Court, and that the Leſſor ſhew no deed; for they that have conuſance of a thing, are to have conuſance alſo of all incidents and dependance thereupon, and (in this caſe) the condition is an incident neceſſarily depending upon the eſtate for life, which was perfected by livery. Vide ſupra 28. A condition incident to an eſtate for life.

Dyer 2. 73 a. 6 H. 8. 65 Emſon avows for Rent-charge granted to him by a ſtranger, who was ſeiſed of the land, where, &c. pro conſilio impendendo, the Plaintiffe pleads in barre, that the Defendant was attainted of Treaſon and committed to the Tower, & yet the Grantor had need of Counſel, and could not have acceſſe, &c. and upon demurrer the Judgment was, that the Avowant ſhould have return; becauſe the rent being incident to the perſon of Emſon, could not be granted over, or forfeited: So likewiſe land given by the King to a Duke to ſupport his dignity, cannot be granted over. See Max. 45. Rent & land incident to the perſon.

Dyer 45. 35. & 36. 30 H. 8. 66 The King can by no way grant or ſever the tenure and ſeigniory in Chiefe from the Crown, for no Subject can take it of his grant with ſuch a prerogative; And therefore if the King make a releaſe to his Tenant in Capite to hold by a penny, and not in Capite, this is a void releaſe, for that tenure is meerly incident to the perſon and Crown of the King, and hath ſuch a prerogative, that it cannot be held of any Subject, as the Tenant in Frankalmoigne cannot hold of any other than of the Donor and of his perſon, becauſe it is a ſpeciall tenure: Alſo, if the King at this day make a gift in taile to hold of him in Capite, and after he grant the reverſion of that land to another in fee, neither the tenure nor ſervice paſſe to the Grantee, but remain in the King, becauſe they are not incident to the reverſion, but to the perſon of the King. Tenure in Capite.

Dyer 175. 25. 1, 2 Eliz. 67 The office of Exigenter of London being void, and Coke Chief Juſtice of the C. B. being then alſo dead, Queen Mary during the vacation of Exigenter of *London*.

of the ſaid places conferred by her Letters Patents the Exigenters of-fice upon Colſhil, and then made Brown Chiefe Juſtice of that Court: But Brown refuſeth Colſhil, and admits Scrogges thereunto: And in this caſe it was reſolved by all the Judges and others (ſave the Juſtices of the Common Bench) that the ſaid office did not appertain to the Qu. to grant, but onely in the diſpoſe of the Chiefe Juſtice for the time being, as an inſeparable incident to his perſon and place, and that by reaſon of common uſage and preſcription.

Leaſe of Demeſnes. 68 A Prior makes a leaſe of the Demeſnes of a Manor rendring rent, the King after the diſſolution makes a leaſe for years of the Manor; And it was adjudged, that by the name of the Manor the rent and reverſion of the Demeſnes paſſed. Dyer 233. 10. 7 Eliz.

Chattel veſted. 69 A Wardſhip fell to the Biſhop of Durham by a tenure of him in Capite, who dies before ſeiſure, yet his Executors ſhall have it, and not the King or Succeſſor, for it was incident to his perſon, and a chattel veſted in him before his death. Dyer 277. 57. 10 Eliz.

42 *Quod tacitè intelligitur, deeſſe non videtur.* V. 64. 11.

Copiholds. 1 When cuſtome hath once created Copiholds of Inheritance, and that the land ſhall be deſcendable, then the Law doth alſo direct the deſcent according to the Maximes and rules of the Common Law, as incidents to every eſtate deſcendable: So (5 E. 4. 7.) when uſes have gained the reputation of Inheritances deſcendable, the Common Law ſhall direct the deſcent of them, and that there ſhall be Poſſeſſio fratris of an uſe, as well as of other Inheritances at the Common Law. Co. l. 4. 22. a. 3. in *Browne's* caſe.

Contract implyes an Aſſumpſit. 2 Every contract executory imports in it ſelfe an Aſſumpſit; For when one agrées to pay money or to deliver any thing, he doth thereby aſſume and promiſe to pay or deliver it; and therefore when one ſells any goods to another, and agrées to deliver them at a day to come, and the other in conſideration thereof agrées to pay ſo much money at ſuch a day; In this caſe both the parties may have an action of Debt, or an action upon the caſe upon Aſſumpſit: For the mutual executory agreement of both the parties imports in it ſelfe, as well a reciprocal action upon the caſe, as an action of debt; And with this agrées the Judgment in Reade and Northwoods caſe, Pl. Co. fol. 128. Co. l. 4. 94. a. 4. *Slades* caſe.

Exchange imports warranty and a condition. 3 In every exchange rightly made, this word Excambium imports in it ſelfe (tacitè) a condition, and alſo a warranty, the one to give reentry, the other Voucher and recompence, and all in reſpect of the reciprocal conſideration, the one land being given in exchange for the other: but that is onely a ſpecial warranty; for upon Voucher by force thereof he ſhall not recover any other land in value, but that only which was ſo given in exchange, &c. And as it is in caſe of warranty, ſo is it alſo in caſe of the condition which the Law implies upon the exchange; for if the exchange be betwixt A. and B. and A. alienes his exchanged land to another, if the land which B. had in exchange, be evicted from him by an eigne title, B. ſhall enter upon the alienee of A. &c. Co. l. 4. 121. a. 4. *Baſtards* caſe.

Dedi, & conceſſi implies warranty and covenant. 4 If a man make a feoffment by this word, Dedi, which implies a warranty, the Aſſignee of the Feoffee ſhall not vouch: but if a man makes a leaſe for yeares by this word Conceſſi or Demiſi, which imports a covenant, if the Aſſignee of the Leſſee be evicted, he ſhall have a writ of Covenant; For the Leſſee or his Aſſignee hath the yearly profits of the land, which encreaſe by labour and induſtry, and if he ſhould loſe the land, he ſhould alſo loſe his labour and coſt, unleſſe he were helped by implicite covenant. Co. l. 5. 17. a. 3. *Spencers* caſe.

Grant of a Ward. 5 If the Grantée of a Ward be impleaded, he ſhall vouch the Grantor; becauſe this word Grant, in caſe of the grant of a Ward (being a Co. l. 5. 18. a. 3. Ibid.

Chattel reall) imports in it ſelfe a warranty, &c.

Co.l.6.36.b.1. Biſhop of *Bathes* caſe.

6 A. being Leſſee for 60 years if he ſhould ſo long live, the reverſion in B. and his heirs, B. grants a leaſe to C. Habendum; cum poſt, five per mortem, ſurſum redditionem, vel forisfacturam prædicti A. acciderit vacare, &c. for 60 yeares: This laſt leaſe veſteth preſently in C. in point of Intereſt (and doth not depend in contingency) to take effect in poſſeſſion at the end of the firſt terme, if by any of theſe accidents the firſt leaſe ſhall happen to be void; for, in this caſe, theſe words (which of them ſoever ſhall firſt happen) are implyed in Law; and the leaſe is not void for the uncertainty, which of them will happen firſt, neither hath the Leſſee election to chooſe which of them he pleaſeth; as if the firſt Leſſee ſurrender, the laſt terme takes place immediately after ſuch ſurrender, &c. Leſſee from a Reverſioner hath *intereſſe termini*.

Co.l.7.34.a.4. *Nevils* caſe.

7 If the dignity of an Earldome hath been entailed to the heirs male, it might have been forfeited for Treaſon before the Stat. of 26 H.8. cap. 13. by reaſon of a ſecret condition in Law annexed unto it; for Earls are created for two purpoſes, viz. Ad conſulendum regi tempore pacis, & ad defendendum Regem & patriam tempore belli: And therefore they bear a Cap and a Robe, in token of Counſel, and are girded with a Sword, to repreſent them gallant Champions, and Cavalliers: Now then when ſuch a perſon againſt his duty, & the end of his dignity commits Treaſon againſt the King, his dignity (though entailed) is forfeited by that condition tacitè annexed to his eſtate. Vide 32. 17. A dignity forfeitable for treaſon before 26 H. 8. 13.

Co. lib. 7.40. *Bedels* caſe.

8 A man by Indenture between him and his wife of one part, his ſecond ſon on the ſecond part, and his third ſon of the third part, in conſideration of natural affection, and that the lands may remaine in his blood, covenants to ſtand ſeiſed to the uſe of himſelfe for life, after to his Feme for life, after of the one moity to one ſon, and of the other moity to the other ſon; In this caſe the uſe accrues to the Feme, although not named in the conſiderations of the deed; becauſe the expreſſe limitation of the uſe to her (being his wife) imports in it ſelfe a ſufficient conſideration, &c. and the rather becauſe it is not repugnant to the deed: So alſo if I covenant, that in conſideration of fatherly love and affection to my eldeſt ſon, I will ſtand ſeiſed to the uſe of my eldeſt ſon for life, or in taile, and after to the uſe of my ſecond ſon in taile, and after to the uſe to ſuch an one my couſin in fee; Here, albeit the conſideration expreſſed in words reſpect onely the eldeſt ſon, yet the conſideration apparent in the deed, in limiting the uſe to my ſecond ſon, or to my Couſin, is ſufficient in Law to raiſe an uſe: In like manner, if I covenant to ſtand ſeiſed to the uſe of my wife, ſon, or couſin, this ſhall well raiſe an uſe without any expreſſe words of a conſideration; for, in that caſe, ſufficient conſideration appears, &c. Co. lib. 11. 25. a. Henry Harpers caſe. Bloud is a ſufficient conſideration to raiſe an uſe without expreſſing it ſo.

Co.l.8.34.b. a. *Pains* caſe.

9 At the Common Law, if lands had been given to a woman, and to the heirs of her body, and ſhe hath taken husband, and had iſſue, and the iſſue had died, and the Feme alſo had died without other iſſue, by which the inheritance of the lands reverted to the Donor; In this caſe, the eſtate of the Feme was determined, and yet the Baron ſhall be Tenant by the Courteſie: for that is tacite implyed in the grant. Tenant by the courteſie.

Co.l.8 82.a.4. *Vivyons* caſe.

10 A. is bound to B. upon condition to ſtand to and abide the award of C. In an action of Debt brought by B. againſt A. the Defendant pleads, that C. made no award, the Plaintiff pleads, that the Defendant diſcharged C. &c. In this caſe the Bond is forfeit, and the Plaintiff need not aver, that C. had notice of the Countermand; for that is implyed in the words of the plea, Revocavit & abrogavit omnem authoritatem, &c. becauſe without notice it is no revocation of the authority; and therefore if there had not been notice, then the Defendant might have What is to be pleaded upon an arbitrement revoked

have taken iſſue, quòd non revocavit, &c. and if no notice were given to C. it would have bæn found for the Defendant; as if a man pleads, quòd feoffavit, dedit, or demiſit pro termino vitæ, that implies livery; for without livery it could not be feoffment, gift, or demiſe for life: And therefore there is a diverſity, when two things are requiſite to the performance of an act, and both things are to be done by the ſame party, as in the caſe of feoffment, gift, demiſe, revocation, countermand, &c. and when two things are requiſite to be performed by ſeveral perſons, as upon the grant of a reverſion, attornment is not implyed in it, and yet without attornment the grant hath not perfection; but inaſmuch as the grant is made by one, and the attornment is to be made by another, it is not implyed in the pleading of the grant; but in the other caſes both things are to be done by one and the ſame party, &c. Bridges & Bentleys caſe, 21 H. 6. 3. accord. 28 H. 6. 6. & 6 H. 7. 10.

Tenir à manual occupation implies a trade.

11 James Wagoner was arreſted at the ſuit of the Chamberlain of London, upon the forfeiture of the paine of 5 l. for that he non exiſtens libera perſona, &c. uſus eſt manuali occupatione de Tallow-chandler, &c. And upon the return of the Habeas Corpus into the Kings Bench, the Court tooke adviſement upon that part of it, whereby it was averred, that he non exiſtens, &c. uſus eſt manuali occupatione de Tallow-chandler, &c. and ſhewed not that he ſold any Candles, &c. For if he made them for his owne uſe, and ſold none for gaine, he might well do it, as every one is permitted to bake or brew, &c. for their own uſe, &c. but it ſeemed to be implyed by the ſame averment, that it was his trade, by which he got his living, viz. by ſelling the commodities of his Trade, and not that he made them onely for his own uſe; For it is not properly ſaid, that one uſeth a manual occupation, when he onely doth it for himſelfe, as he that brews or bakes for his own uſe, cannot be properly ſaid to uſe the occupation of Brewer or Baker, &c.

Co. lib. 8. 129. a. 2. The caſe of the City of *London*.

Malice præſumed implied in indictments

12 If one kill a Miniſter of Juſtice in the execution of his office, the Indictment may well be general, viz. that the Priſoner felonicè, voluntariè, & ex malitia ſua præcogitata, &c. percuſſit, &c. without alleadging any ſpecial matter; for the evidence will well maintain the Indictment, inaſmuch as in this caſe the Law implies malice præpence: So if a Thiefe, which offers to rob a true man, kils the true man, in reſiſting the Thiefe, this is murder of malice præpence; or if one kill another without any provocation, or without any malice præpence that can be proved, the Law adjudgeth that to be murder, and implies malice; And in both theſe caſes they may be indicted generally, that they killed de malice præpence; for malice implied by the Law, being given in evidence, is ſufficient to maintaine the generall indictment: And ſo it was adjudged in Mackalleyes caſe, for killing Fells a Serjeant of London.

Co. lib. 9. 67. b. 3. *Mackallies* caſe.

Laye implies the time paſt.

13 If a man plead, that ſuch a grant made per Iohannem nuper Epiſcopum Sarum, &c. was void; Theſe words nuper Epiſcopum, &c. imply and import, that now he is not Biſhop of Sarum.

Co. lib. 10. 58. b. 1. The Biſhop of *Sarums* caſe.

Juriſdiction of Court prohibited.

14 When a Court is prohibited by Statute to hold plea of certaine cauſes, if one be ſued there contrary to that Statute, he may not onely have a Superſedeas (in the nature of a prohibition) to cauſe the Iudge to ceaſe proceeding; but likewiſe ſhall have an action upon that Statute againſt the party, that ſues contrary to the ſame Statute; notwithſtanding that it is in courſe of legal proceeding, and that the words of the Statute do not expreſſely give any ſuch action to the party; for, that way of reliefe is a benefit, which (as a conſequent) is implied in every ſuch Statute.

Co. lib. 10. 75. b. 2. The caſe of the *Marſhalſea*.

Co. lib. 11. 76. a. 4. *Magdalen* Colledge caſe.

15 By the Statute of 18 Eliz. cap. 2. no conveyances of the Queen are confirmed, but ſuch as are for the ſatisfaction of debts, &c. and other good conſideration; for ſo it is in the preamble, and although (good) is omitted in the body of the Act, yet it is neceſſarily implyed, not onely by the connexion of the preamble to the purview, but alſo by this word (conſideration) which (as in 16 Eliz. Dyer 336.) is a cauſe or occaſion meritorious, requiring a mutual recompence in Deed or in Law. Good conſideration implyed.

Co. lib. 11. 86. b. 3. The caſe of Monopolies.

16 It appears by the Writ of Ad quod damnum (in F. N. B. 222.) that every gift or grant of the King hath this condition, either expreſly or implicitely annexed unto it: Ità quòd patria per donationem illam magis ſolito non oneretur, ſeu gravetur; And therefore every grant, made in grievance, or prejudice of the Subject, is void. Monopolies.

Co. l. 11. 98. a. 4. *James Bags* caſe.

17 There is a condition in Law tacitè annexed to the freedome or liberty of a Citizen, or Burgeſſe, which if he break, he may be diſ-infranchiſed, as if he commit any act, which is againſt the duty and truſt of his freedome, and to the prejudice of the City or Burrough, and againſt the Oath which he tooke, when he was made Free-man, theſe are cauſes of his removal. A Freeman of a Corporation.

Fitz. N. B. 134. f.

18 If the Tenant holds of his Lord by Homage Anceſtrel, and is impleaded; Albeit he hath no charter of it, yet ſhall he have a Writ of Warrantia Cartæ againſt the Lord, for that tenure implies a Warranty. Homage Anceſtrel implies a warranty.

Fitz. ibid. g.

19 If a man without deed makes a gift in taile, or a leaſe for life rendring rent, and after he is impleaded in an action, wherein he cannot be vouched; In that caſe he ſhall have a Writ of Warrantia cartæ againſt the Donor, or Leſſor, or his heire, that hath the reverſion; for the reverſion, and the rent reſerved makes a Warranty in Law by the Statute of Bigamis, cap. ultimo, albeit he hath no deed of it. Warranty implied.

Fitz. ibid. h.

20 If a man grant land by theſe words, Dedi, conceſsi, &c. he ſhall be bound to Warranty during his life (but not his heirs, unleſſe he be thereunto eſpecially charged by the Grantor) for theſe words, Dedi, conceſsi, &c. imply a Warranty; and if the Feoffee be impleaded, he ſhall have a Writ of Warrantia cartæ againſt the Feoffor by force of theſe words in the deed, &c. 4. *Dedi* implies a warranty.

Dyer 26. 171. 28 H. 8.

21 Ruſſell brings an action upon the caſe againſt A. for ſaying that he was a falſe Thiefe, and that ſuch a night he would have robbed him to his damage, &c. And A. comes, Et defendit vim, &c. & quoad propalationem, &c. querens non fuit damnum, in forma qua, &c. to which plea the Plaintiff demurred in Law, and Judgement was given for him; becauſe (by implication) the words are confeſſed, and no damage can be more grievous, then taking away a mans good name, and a Writ of Inquiry was awarded. An action of the caſe for words.

22 Vide Mar. 19. Pl. 1.

Dyer 41. 1. &c. 30 H. 8.

23 In a Replevin the Plaintiff is non-ſuit, whereupon the Defendant has a Returno habendo, but about the ſame time the Plaintiff prays a Writ of ſecond deliverance, and had it, and both the Writs were in the Sheriffs hands at one time unſerved; In this caſe, the Writ of ſecond deliverance is a Superſedeas to the Returno habendo, by which it is implyed, that the Sheriff ought not to ſerve the Returno habendo. Replevin. Second deliverance.

Dyer 135. 13. 3, 4 P. M.

24 In a Quare Impedit the Plaintiff entitles himſelfe to the next avoydance by the grant of the right Patron to a Stranger, who made two Executors, and died, and for that the Executors granted the next avoidance to him, Et hoc abſqueta oſtentione literarum, without ſhewing the teſtament of the firſt Grantee: And in this caſe it ſeems he need not ſhew them, becauſe albeit the Executors never proves the teſtament, yet their grant of the next avoydance was good, for that it was an adminiſtration implyed by Law. An adminiſtration in Law.

Debt for rent.

25 A leaſe for yeares is made of an houſe with divers Implements rendring rent, the Lessor enters and makes feoffment, the Leſſee reenters, and for rent arreare the Feoffee brings debt, and adjudged mainteinable, albeit there was no privity; Howbeit, the regreſſe of the Leſſee is an attornment in Law, whereupon it ſeemes the Law creates a privity: For, in this caſe, the rent was not extinct, but onely ſuſpended, untill the Termor by his regreſſe revived the reverſion. Dyer 211. 37. 4 Eliz.

Ejectione Firmæ.

26 In an Ejectione Firmæ, of a leaſe of a Rectory, the verdict paſſed for the Plaintiff, and it was moved in arreſt of Judgement, that it was not ſhewed that the Parſon was in life; Howbeit, becauſe it was averred by Implication in the Court by theſe words, Fuit & adhuc eſt ſeiſitus, &c. the Plaintiff had judgement. Dyer 304. 52. 14 Eliz.

Quare Impedit.

27 A Church was void by the taking of a ſecond Benefice upon the Statute of 21 H. 8. 13. and lapſe devolved to the Queen, who preſents A. who was admitted, inſtituted, and inducted, and afterwards the Queen preſents B. A. dies, the Patron brings a Quare Impedit againſt B. and counts of the avoydance and lapſe ſuprà, and that the Queen preſentes A. who was admitted and inſtituted, and that the Church is now void by the death of A. And the queſtion was, whether or no this was ſufficient without ſaying Inducted: And it ſeemed it was, becauſe the Plaintiff alleadged, that the Church was void by the death of A. which implies Induction, and then it was not revocable. Dyer 360. 7. 20 Eliz.

28 Vide Hob. 5. Gardiner againſt Bellingham. 8. Yardly againſt Ellill.

43 Things by reaſon of another are in the ſame plight.

Poſſeſſio fratris.

1 Albeit the Maxime in Law be, Poſſeſsio fratris facit ſororem eſſe hæredem, yet if the Sister die, living the Brother, her iſſue ſhall inherit before the brother of the halfe blood, becauſe he perſonates the Brother, and therefore ſhall ſucceed the brother in the inheritance. Co. Inſt. pars 1 15. b. 3.

Acceptance of Rent.

2 Tenant in taile makes a leaſe for forty yeares, reſerving a rent, to commence ten years after: Tenant in taile dies, the iſſue enters and enfeoffs A. the ten yeares expire, the Leſſee enters; if A. accepts the rent, the leaſe is good, for he ſhall have the ſame election, that the iſſue in taile had, either to make it good, or to avoid it, &c. Co. ibid. 46. b. 1.

Coparceners.

3 If there be two Coparceners of a reverſion, and Waſte is committed, and the one of them die, the Aunt and the Niece ſhall joyne in an action of Waſte. Co. ibid. 53. b. 4.

Courteſie. Dower. Waſte.

4 A Tenant by the Courteſie or in Dower, can hold of none but of the heire, and his heirs by deſcent; and therefore if they grant over their whole eſtate, and the Grantee doth Waſte, yet the heire ſhall have an action of Waſte againſt them, and recover the land againſt the Aſſignee. Co. ibid. 54. a. 1.

Waſte.

5 If Tenant for life grant over his eſtate upon condition, and the Grantée doth Waſte, and the Grantor re-entreth for the condition broken, the action of Waſte ſhall be brought againſt the Grantée, and the place waſted recovered, &c. 21. Co. ib. 54. a. 3.

Tenant at will. Baron and Feme.

6 If a woman make a leaſe at will reſerving a rent, and then taketh Husband, this is no countermand of the leaſe at will; but the Husband and Wife ſhall have an action of Debt for the rent: And ſo is it if a leaſe be made to a woman at will, reſerving a rent, and the Leſſee taketh Husband, this is no countermand of the leaſe, but the Leſſor may have an action of Debt, and diſtrain them for the rent: So if the Husband and Wife make a leaſe at will of the wives land, reſerving a rent, and the husband die, yet the leaſe continueth: In like manner, if a leaſe be made by two, to two others at will, and the one of the Leſſors Co. ibid. 55. b. 4. Co. lib. 5. 10. *Henſteads* caſe.

and

and of the Leſſées die, the leaſe at will is not determined in either of theſe caſes, &c.

Co. Inſt. pars 1. 58. b. 1. 7 Tenant for years, Tenant by Statute Merchant, Staple, Elegit, at will, Guardian in Chivalry, &c. may be Lords of a cuſtomary Manor, as well as thoſe that have fée; for albeit they be not properly ſeiſed, but poſſeſſed, yet are they Domini pro tempore, not onely to make admittances, but to grant voluntary copies of ancient Copihold lands, which come into their hands by forfeiture, eſcheat, or otherwiſe; Alſo admittances made by Diſſeiſors, Abators, Intruders, Tenant at ſufferance, or others that have defeaſible titles, ſtand good againſt them that right have; becauſe it is a lawfull act, and they are compellable to do it; Howbeit they cannot make voluntary grants of Copies, as aforeſaid, to binde the Diſſeiſées, &c. becauſe they come in by wrong, and have eſtates that may be defeated. *Domini pro tempore.*

Co. ibid. 58. b. 2. 8 In ſome ſpecial caſe an eſtate may be granted by Copie by one, that is not Dominus pro tempore, nor that hath any thing in the Manor; As if the Lord of a Manor by his Will in writing, deviſeth that his Executors ſhall grant the cuſtomary Tenements of the Manor according to the cuſtome, &c. for the payment of his debts, and dieth, the Executor having nothing in the Manor, may make grants according to the cuſtome of the Manor. Copiholds grantable by an Executor.

Co. ibid. 59. b. 3. 9 If the Lord of the Manor for the time being be Leſſée for life, or for years, Guardian, or any, that hath a particular intereſt, or Tenant at will of a Manor (all which are accompted in Law Domini pro tempore) do take a ſurrender into his hands, and before admittance the Leſſée for life dieth, or the years, intereſt, or cuſtodie do end or determine, or the Will is determined, though the Lord cometh in above the leaſe for life or for years, the cuſtodie, or any other particular intereſt or tenancy at will, yet ſhall he be compelled to make admittance according to the ſurrender: And ſo it was holden in the Earl of Arundels caſe, in 17 Eliz. See more of this Co. l. 4. in the Copihold caſes, & Trin. 1. Jac. Inter *Shepland* and *Ridler*, in Repl. in Co. Ba. the caſe of Guardian in ſoccage adjudged. *Dominus pro tempore*, compellable to admit.

Co. ib. 76. b. 1. 10 In many caſes the heire ſhall be in ward, albeit the Tenant died not ſeiſed, &c. nor in the Homage of the Lord: As if the Tenant maketh a feoffment in fee upon condition, and the Feoffor dieth, after his death the condition is broken, the heire within age entreth for the condition broken; In this caſe the heire ſhall be in ward, and yet the Feoffor had no eſtate or right in the land at the time of his death, but onely a condition, and which was broken after his deceaſe: but becauſe the condition reſtoreth the Tenant to the land in nature of a deſcent (for he ſhall be in by deſcent) by the ſame reaſon ſhall it reſtore the Lord to the wardſhip, &c. The Lord ſhal have Wardſhip, though not dying ſeiſed.

Co. ib. 89. b. 4. 11 If a ſtranger entreth into the lands of the Infant within age of 14 years, & taketh the profits of the ſame, the Infant may charge him as Guardian in Soccage: And this doth well agrée with the writ of accompt againſt a Guardian in ſoccage; for the words be, Idem B. præfato A. rationabilem compotum ſuum de exitibus pervenientibus de terris & tenementis ſuis in N. quæ tenentur in ſoccagio, & quorum cuſtodiam Idem B. habuit, dum prædicta A. infra ætatem fuit, & dicitur; and true it is, that in judgement of Law he had the cuſtodie of the lands, and is called Tutor alienus, whereas the right Guardian in Soccage is called Tutor proprius; Neither is it any plea for him to deny, that he is prochein amy, but he muſt anſwer to the taking of the profits, as Littleton ſaith, Sect. 124. A ſtranger Guardian in ſoccage accountable.

Co. ibid. [108. a. 4. 12 If one holdeth land of a common perſon in groſſe as of his perſon, and not of any Manor, &c. and this Seigniory eſcheateth to the King, (yea though it be by attainder of Treaſon) he holdeth of the perſon Tenure in *Capite*.

ſon of the King, as he held before of the perſon of the Subject, and not of the King in Capite; becauſe the originall tenure was not created by the King: And therefore it is directly ſaid, that a tenure of the King in Capite is, when the land is not holden of the King, as of any Honour, Caſtle, Mannor, &c. But when the land is holden of the King as of his Crown. Vide Dyer 44. 28. &c. 30 H. 8. & Mag. Car. cap. 31. & 25. 4.

Advowſon appendant. 13 An Advowſon is appendant to the Mannor of Dale, of which Mannor the Mannor of Sale is holden, the Mannor of Sale is mane parcel of the Mannor of Dale by way of Eſcheat; In this caſe, the Advowſon is ſtill onely appendant to the Mannor of Dale. Co. lib. 122. b. 1.

Common appendant. 14 If Common appendant be claimed to a Mannor, yet (in rei veritate) it is appendant to the Demeſnes and not to the ſervices; and therefore if a tenancy eſcheat, the Lord ſhall not increaſe his Common by reaſon of that. Co. lib. 122. a. 4.

An Aſſiſe for rent after diſſeiſin. 15 If the Tenant reſcue the Diſtreſſe, and after is diſſeiſed of the tenancy; yet an aſſiſe lyeth againſt him, for the Diſſeiſin done of the rent by the Reſcous; &c. Co. Inſt. pars 1. 160. b. 3.

Coparcenary in other lands. 16 If one of the Parceners take Baron and die, the Baron being Tenant by the Courteſie is compellable by a writ de partitione faciendâ, to make partition, and ſhall be ſoyntly impleaded with the other Coparcener; for he doth continue the ſtate of Coparcenary, as the other Parcener doth, &c. So likewiſe if there be two Coparceners, and one of them doth alien in fee, the Alienée and the other Coparcener are Tenants in common, and ſeveral writs of Præcipe ſhall be brought againſt them, and yet the Parcener may have a writ of partition againſt the Alienée at the Common Law, which is a ſtronger caſe, than the caſe put of Tenant by the Courteſie. Co. lib. 174. b. 4. &c.

The heire in Hotchpot. 17 If the Donees in Frankmarriage die before the lands be put into Hotchpot with the other Coparcener, the heire of the Donees may well do it. Litt. §. 270. Co. lib. 178. a.

Diſſeiſee ſhall not take away entry. 18 If a Diſſeiſor make a leaſe to a man and to his heires during the life of I. S. and the Leſſee dieth, living I. S. this ſhall not take away the entry of the Diſſeiſee; becauſe he that died ſeiſed, had but a Free-hold, and heirs in that caſe were added to prevent an occupant: For an heire in that caſe ſhall not have his age, &c. as it was adjudged in Lambs caſe, P. 26 Eliz. in Co. Ba. Co. lib. 239. a. 3.

Right loſt after recovery. 19 If the Diſſeiſee diſſeiſe the heire of the Diſſeiſor, albeit the heire recover the land againſt the Diſſeiſee, yet ſhall he leave the proceeding right in the Diſſeiſee: So if a woman that hath right of Dower diſſeiſe the heirs, and he recover the land againſt her, yet ſhall he leave the right of Dower in her. Co. lib. 266. a. 4.

Attornment. 20 If either the Grantor or Grantee of a Seigniory, rent, reverſion, remainder, &c. die before attornment, the attornment is thereby commanded; But albeit the Tenant of the land die, or grant over his eſtate to another, yet may he, that hath his eſtate either by veſtent or grant attorn at any time. Co. lib. 315. a. 4.

Writ maintainable. 21 Regularly, when the reverſion is devolved, the Leſſor cannot have an action of Waſte; yet in ſome ſpecial caſes an action of Waſte ſhall lie, albeit the Leſſor has nothing in the reverſion at the time of the Waſte done: As if Tenant for life make a feoffment in fee upon condition, and Waſte is done, and after the Leſſee re-enters for the condition broken; In this caſe, the Leſſor ſhall have an action of Waſte: So likewiſe if Leſſee for life is diſſeiſed, and Waſte is done, the Leſſee re-enters; Here alſo, an action of Waſte ſhall be maintained againſt the Leſſee, &c. 5. Co. lib. 356. a. 4.

Co. ibid. 366. b. 3.

22 A warranty that commenceth by diſſeiſin is properly, when the diſſeiſin is done immediately to the heire, that is to be bound by it; And yet if the Father be Tenant for life, the remainder to the ſame in fee, the father by covin and conſent maketh a leaſe for years, to the end that the Leſſee ſhall make a feoffment in fee, to whom the father ſhall releaſe with warranty, and all this is executed accordingly, the father dieth; Here, this warranty ſhall not binde, albeit the Diſſeiſin was not done immediately to the ſon; for the feoffment of the Leſſee is a diſſeiſin to the father, who is particeps criminis: So it is if one brother make a gift in tatle to another, and the Uncle diſſeiſe the Donee, and enfeoffeth another with warranty, the Uncle dieth, and the warranty deſcendeth upon the Donor, and then the Donee dieth without iſſue: Here, albeit the Diſſeiſin was done to the Donee, and not to the Donor, yet the warranty ſhall not binde the Donor: So likewiſe if the father, the ſon, and a third perſon be Joyntenants in fee, the father maketh a feoffment in fee of the whole with warranty, and dieth, the ſon dieth, the third perſon ſhall not onely avoid the feoffment for his own part, but alſo for the part of the ſon, and he ſhall alſo take advantage, that (in this caſe) the warranty commenced by diſſeiſin, though the diſſeiſin was done to another, &c. Co. l. 5. 79. b. Fitzherberts caſe. Warranty that begins by diſſeiſin.

Co. ibid. 372. a. 4.

23 By the Statute of the 32 H. 8. cap. 36. a fine with proclamations according to the Statute of 4 H. 7. cap. 24. ſhall barre the eſtate taile, but not him in the reverſion or remainder, if he maketh his claime, and purſue his action within five years after the eſtate taile ſpent, &c. Howbeit if a gift be made to the eldeſt ſon, and to the heires of his body, the remainder to the father and to the heires of his body, the father dieth, the eldeſt ſon levieth a fine with proclamations, &c. and dieth without iſſue, this ſhall bar the ſecond ſon; for, the remainder deſcended to the eldeſt, and therefore what the father might have done by force of a fine, the eldeſt ſon ſhall in this caſe alſo do, &c. Fine barres an entail in reverſion.

Co. lib. 3. 84. The caſe of Fines. *Daliſon*, 2 El. & 5 Eliz.

24 If the Lord enter for the condition broken, or if the Leſſee ſurrender unto the Lord; Here, the eſtate and terme is determined, and yet the Lord ſhall have an action of debt for the arrearages due before the condition broken, or the ſurrender made, as appears in Fitz. N. B. 120. & 122. 30 E. 3. 7. 6 H. 7. 3. b. (contrary to the booke of 32 E. 3. tit. Barre 262. which is not Law) and this is in reſpect of the contract betwixt the Lord and the Leſſee. Debt for rent after ſurrender, &c.

Co. lib. 3. 23. b. 4. *Walkers* caſe.

25 A man may preſcribe in a Water-courſe leading to his Grift-mill, albeit it was of late time changed from a Fulling-mill to a Grift-mill; Et vice verſa, becauſe that alteration is not of the ſubſtance of the preſcription, but the Mill may be ſo deſcribed, to ſhew the nature and quality of it; and (doubtleſſe) at firſt he might preſcribe in the Water-courſe before any Mill was built. Preſcription in a Waterhouſe.

Co. l. 4. 87. a. 1. *Luttrels* caſe. Co. ibid.

26 If a man have Eſtovers either by grant or preſcription belonging to his houſe, although he alter and change the rooms and chambers of the houſe, as to make the Hall to be the Parlour, and the Parlour to be the Hall, and ſuch like alteration of the quality of the houſe, and not of the houſe it ſelfe, and without making any new Chimneys, whereby the owner of the wood may ſuffer preiudice, or albeit he make new Chimneys, or an addition to the houſe, yet ſpend none of the Eſtovers in thoſe new Chimneys, or in the part newly added, doth in none of theſe caſes deſtroy the ancient preſcription; for then many preſcriptions would be deſtroyed: There is the ſame law of Conduits, Water-pipes, and the like: Alſo if a man have an ancient window in his Hall, and after he convert his Hall to a Parlour or any other uſe, yet his neighbour cannot ſtop it, for he can preſcribe to have a light in ſuch a part of his houſe. Preſcription of Eſtovers, &c.

27 If

Corporation translated enjoys the antient privileges.

27 If a Corporation hath Franchiſes and Priviledges by grant or preſcription, and after they are incorporate by another name, as if they were Bailiffs and Burgeſſes before, now they are Maior and Cominalty; or Prior and Covent before, and after they are tranſlated to a Deane and Chapter, &c. Although in theſe caſes, the quality and name of their Corporation is changed, and eſpecially in the caſe of the Prior and Covent (for of Regular, which are dead perſons in the Law, they are made Secular) yet the new Corporation ſhall enjoy all the Franchiſes, Priviledges, and Hereditaments which the old Corporation had, be it by grant or preſcription; for no man can be prejudiced by it, &c. Co. ibid. b. 1.

Stranger bound by a cuſtome.

28 In debt againſt an Adminiſtrator upon an Obligation, the Deſendant pleads, that the cuſtome of London is, that the Adminiſtrator ſhall be bound to pay a debt upon a ſimple contract, as upon an Obligation, &c. and that he had already payd I. S. &c. And in this caſe it was adjudged, that the Plaintiff being a ſtranger, was as well bound by that cuſtome, as if he had been a Citizen. Vide 1 E. 4. 6. accord. Co. l. 5. 83. a. *Snellings* caſe.

Deſtruction in an Advowſon.

29 Winſor Plaintiff hath an Advowſon of two parts, the Deſendant of the third, the Plaintiff preſents one, the Incumbent dies, then in the time of E. 6. he preſents one Parry, who in the time of Queen Mary was deprived, quia conjugatus, &c. whereupon the Deſendant preſents his Clerke, who 1 Eliz. was alſo deprived by Juell and other High Commiſſioners, and the firſt ſentence adjudged void, and Parry reſtored, the Clerk of the Deſendant dies, Parry alſo dies, the Deſendant preſents, becauſe his Clerk was deprived, whereupon the Plaintiff demurres; And in this Quare Impedit judgment was given againſt the Plaintiff; for albeit the Clerk of the Deſendant was Parſon for the time, to all purpoſes, and during the firſt deprivation Parry was not Incumbent; yet when the ſecond ſentence came, then was Parry incumbent againe by force of the firſt preſentation, inſtitution, and induction, and there needed no new inſtitution, &c. And by force of the ſecond ſentence the Preſentée of the Deſendant was removed, and Parry reſtored: And therefore when Parry dyed, which was the laſt Preſentée of the Plaintiff, the Deſendant ſhall preſent as in his turn, and by force of the ſecond ſentence Parry was Parſon in the ſame plight & condition that he was in upon his firſt preſentation, notwithſtanding the preſentment of the other by the Deſendant, &c. Co. l. 5. 102. *winſors* caſe.

Inferiour Courts.

30 When a writ of right is directed to the Lord of a Mannor, or his Bayliffs, or a Iuſticies, or other Vicontiel Writs are directed to the Sheriffe, &c. that ſhall not change the nature or juriſdiction of thoſe Courts, as to make the Lord or Sheriffe (to whom thoſe Writs are directed) to be Judges of thoſe Courts reſpectively, which were not ſo before; but the Suters do ſtill remaine Judges thereof; Neither yet ſhall the direction of thoſe Writs to the Lord or Sheriffe, as aforeſaid (albeit they are in themſelves matter of Record) conſtitute the Lord or Sheriffe to be Judges of Record, or a Court Baron, Hundred Court, or County Court, to be Courts of Record; For upon a Judgment given in any of thoſe Courts, a writ of Falſe judgement lies, and not a writ of Errour, &c. Co. l. 6. 11. a. *Gentlemans* caſe.

Change by death of the King.

31 When the King demiſes his Crown to the next Succeſſor, upon the genetal reſummons by the Kings writ (which begins thus, Mandamus vobis, quod ad ſectam noſtram animumque ligeorum populi noſtri, &c.) the originall and iſſue (if any be joyned) is revived; for that is a full record, and ought to be entred; it is otherwiſe of the proceſſe before iſſue joyned, voucher, garniſhment, &c. yet they ſhall be alſo revived upon a ſpecial writ, reciting all the ſpecial proceeding: And it appeares by the booke of Entries, tit. Reattachment, 499. that if the Iſſue be joyned, and Co. lib. 7. 29. b. 4. Diſcontinuance of proceſſe, *per mort de la Royne.*

the Jury returned, and a day given for tryall, before which day the King dies, yet by ſpecial reſummons all ſhall be revived, for the Jury was returned of record, and the record thereof was made full and perfect, &c.

Co. lib. 11. 64. a. 2. Doctor *Foſters* caſe.

Statutes for going to Church.

32 It is ordained by the Statute of 1 Eliz. cap. 2. That every perſon ſhall reſort to their Pariſh Church, or (upon let thereof) to ſome other every Sunday and Holiday, &c. And by the Statute of 23 Eliz. cap. 1. That every perſon not repairing to Church according to 1 Eliz. 2. being thereof lawfully convict, ſhall forfeit twenty pound for every moneth they ſo make default, and that of the forfeitures aforeſaid, the Queen, &c. ſhall have the two third parts, viz. the one to her owne uſe, the other for reliefe of the poore, &c. and the other third part the proſecutor ſhall and may recover by action of debt, &c. And by the Statute of the 29 Eliz. cap. 6. it is enacted, That every ſuch offender once convicted, ſhall afterwards in Eaſter and Michaelmas Termes, pay unto the Exchequer twenty pound for every moneths abſence from Church, &c. and if default be thereof made, &c. the Queens Majeſtie, &c. ſhall and may by proceſſe out of the Exchequer ſeize all the offenders goods, and two parts of his lands, &c. And lastly, by the Statute of 35 Eliz. cap. 1. It is ordained, &c. that for the more ſpeedy recovering, &c. of the forfeitures, &c. payable to the Queen, &c. by vertue of this Act, and of 23 Eliz. 1. all and every ſuch forfeitures, &c. ſhall be recovered, &c. by action of debt, &c. in the Kings Bench, the Common Pleas, or Exchequer, as other debts may be recovered, &c. Here albeit the Statutes of the 29 and 35. ſeems to alter the law of the 23. in reſpect of part of the penalty given to the proſecutor by the 23. and being all of it mentioned, as given to the Queen in the other two ſubſequent Acts: Yet the Act of the 23. remains in full force according to the tenour of the ſame, notwithſtanding ỳ ſaid ſubſequent Acts; becauſe thoſe two Acts do not give the penalty to any new perſon, but to the ſame perſon to whom the Statute of the 23. giveth it, viz. to the Queen, &c. and they are but acts of addition (eſpecially that of the 35.) to give a more ſpeedy remedy, than was given by that of the 23. &c. As in a Writ of Meſne, the proceſſe at the Common Law was Diſtreſſe infinite, and although the Statute of Weſtm. 2. cap. 9. gives a more ſpeedy proceſſe, and in the end a Forejudger, yet the Plaintiff may take which proceſſe he will, either at the Common Law, or upon the ſaid Statute, becauſe both are in the affirmative. Vide ibid. many authorities accordant, &c.

Co. ibid. 4.

Grant of Ward.

33 In many caſes the deſignation of one perſon in a late Act of Parliament, ſhall not exclude another perſon which was authorized to do the ſame thing by an Act precedent. It is provided by the Statute of the 8 H. 6. cap. 16. that after office found, &c. he which found himſelfe grieved, might (within the moneth) after traverſe, and to take the lands and tenements to farm, and that then the Chancellour, Treaſurer, and other Officer ſhall demiſe unto him to farme, untill, &c. (Vide 13 E. 4. 8.) And now by the Statute of the 1 H. 8. cap. 16. he hath liberty by the ſpace of three moneths: And after the Statute of the 32 H. 8. cap. 46. gives authority to the Maſter of the Wards, with the advice of one of the Council to make a leaſe of the Wards lands, or of an Idiots, during the time that they ſhall remain in the Kings hands: Here, albeit the laſt deſignes another perſon, yet doth it not utterly take away the firſt: For, if before any leaſe made by the Maſter of the Wards, the Chancellour and Treaſurer make one according to the Statute of 8 H. 6. then cannot the ſaid Maſter demiſe the lands: So albeit the Maſter grant them firſt to another, the Chancellour, Treaſurer, &c. cannot demiſe them to the party grieved, as Stanford holds Prær. fol. 69. a. & b. where he mentioneth the rule, Leges poſteriores priores contrarias abrogant. In 43 Aſſ. Pl. 9. the Statute of 13 E. 3. de Mercatoribus,

catoribus, which gives assise to the Tenant by Statute Merchant, taketh not away the Assize, which the Tenant of the Franktenement had before, but both may well stand together; So in 33 H. 8. Dyer 50. if it should be enacted, that the youngest son should have an appeale of the death of his father, that would not exclude the eldest son of his suit, because there are no words of restraint, &c.

Ancient Demesne. 34 In a writ of right Close, if the writ of the Demandant abate, and thereupon he brings a writ of false judgement in the Common Pleas, and there the judgement being reversed, the writ is awarded good, then shall the Demandant hold plea there, and a judiciall writ shall issue out of that Court in nature of the protestation made in the first writ, and if the protestation were in the nature of an assise of Mortdancester, the Justices shall direct a writ to the Sheriff to summon the Juroys to come out of the ancient Demesne to the Common Pl. and the whole matter shall be tryed and determined in that Court, : And albeit judgement be given of that land in the Common Pleas, yet shall the land still remain ancient Demesne, as it was before. F.N.B. 19. d.

Preferation by lapse. 35 If a man present to an Advowson, and after the Incumbent dies, and the Ordinary presents by lapse another Incumbent, and after that Incumbent also dies; now may the right Patron present again; and if he be disturbed, he shall have an assise De Darrein presentment, notwithstanding those meane presentments. F.N.B. 31. k.

Disturbance to present. 36 If a disturber presents to an Advowson, and the Patron brings an assise of Darrein presentment, and hanging the Writ the Incumbent dies, if the disturber present again another Incumbent, and dies, yet the Patron shall have an assise of Darrein presentment upon the first disturbance by Journeys accompts against the heire of the disturber: And so if the disturber present two or three times within the six moneths, the true Patron shall have an assise de Darrein presentment upon the first disturbance. F.N.B. 32. o.

Preferation by Coparceners. 37 If two Coparceners make partition to present by turne, albeit the one Coparcener usurp upon the other, and presents in her turne, this presentment shall not put her out of possession; but she shall have her turne, when it falls again, and shall have a Quare Impedit, or Scire facias upon the Composition (if it be upon record) if she be disturbed to present. F.N.B. 34. i.

Preferation by an Abbot. 38 If in the time of the vacation of an Abbey or Priory, a Church happens to be void, which is of the patronage of the Abbey or Priory, and a stranger usurps and presents unto it, this usurpation shall not prejudice the Successor; but that at the next avoydance of the said Church he may present, and have a Quare Impedit: It is otherwise, when the usurpation is made in the time of his Predecessour, for that puts the succession out of possession, if the six moneths be past. F.N.B. 34. m.

Action of Deceipt. 39 If a man lose land by default in a Præcipe quod reddat, and die, his heire shall have an action of Deceit, as well as the father, and shall have restitution. F.N.B. 98. q.

The like. 40 If a man have execution by default upon a recognizance in a Scire facias sued against one, and the Defendant dies, his Executors shall have a Writ of Deceit, and shall be restored. F.N.B. 98. r.

Warrantia cartæ. 41 If a man hath a Warrantia cartæ hanging, albeit the Plaintiff that hath the Action against him, who brings the Writ De warrantia cartæ be non-suited in his action, that shall not abate the Writ De warrantia cartæ; For, he may have that Writ, although he had no action sued against him for the land, &c. F.N.B. 135. l.

Recognizance. Nisi quæ- 42 Rosse was bound in a Recognizance of 1000 Marks to Pope, and Curson, according to the Statute of the 23 H. 8. cap. 6. and after Rosse and his wife by fine give to the Conisées the fifth part of the Manor of Pl. Co. 92. *Rosse & Popes* case.

Burton Conſtable and other lands in the County of Yorke in fée; And after Pope (as Survivor) ſues execution of the ſaid Recognizance in London againſt Roſſe, and his body was taken, and the ſaid Roſſe, ſuppoſing the ſaid fine of thoſe lands in the County of Yorke would have diſcharged him of the recognizance, brought his Audita querela, containing the whole matter, upon which Writ and Declaration Pope demurred in Law: And in this caſe, it was adjudged, that the Audita querela would not lie, nor that the purchaſe (by the Conuſées) of parcell of the land, that Roſſe had at the time of the recognizance acknowledged, could diſcharge the recognizance; becauſe the perſon was properly charged with it, and not the land, but in reſpect of the perſon, &c.

Finch 15. 43 The cuſtome of Gavelkind is not changed, though a fine and recovery be had of the ſame at the Common Law, for this is a cuſtome by reaſon of the land, and therefore runneth always with the land: But otherwiſe it is of land in ancient Demeſne, partable amongſt the Pales; for there the cuſtome runneth not with the land ſimply, but by reaſon of the ancient Demeſne: And therefore becauſe the nature of the land is changed by the fine and recovery from ancient Demeſne to land at the Common Law, the cuſtome of parting it amongſt the Pales is alſo gone. Gavelkind. Ancient Demeſne.

8 E. 8. Dyer 72. *Finch* 16.

F.N.B. 211.b. *Finch* ibid. 44 If an erroneous recovery be had of lands in Burrough English, the youngeſt ſon ſhall have a Writ of Error, becauſe the land it ſelf goeth to him; ſo ſhall all the ſons of lands in Gavelkind. Burrough English.

42 E. 3. 3. *Finch* ibid. 45 Two Coparceners make partition, and one covenants with the other to acquit the land: Now if the Covenantée alters his part, the Alienée ſhall have a writ of covenant. Parceners.

Co. Inſt. pars 1 171. a. 2. 46 If the annual value of the land be equal at the time of the partition, and after become unequal by any matter ſubſequent, as by ſurrendring, ill husbandry, or the like, yet the partition remains good. Partition.

Judicis officium eſt, ut res, ita tempora rerum
Quærere, quæſito tempore, tutus eris.

Co. inſt. pars 1. 23. a. 11. 47 Whoſoever is ſeiſed of land, hath not onely the eſtate of land in him, but the right to take the profits, which is in nature of the uſe, and therefore when he makes a feoffment in fée without valuable conſideration to divers particular uſes, ſo much of the uſe, as he diſpoſeth not, is in him as his ancient uſe in point of Reverter: As if a man be ſeiſed of two acres, the one holden by Knight ſervice in priority, and the other by the ſame ſervice in poſteriority, and maketh a feoffment in fée of both acres to the uſe of himſelfe and his heirs, the old uſe continued in him, and the priority and poſteriority remain: So it is of lands of the part of the Mother; for if one make a feoffment in fée of them to the uſe of himſelfe and his heirs, the uſe ſhall ſtill goe to the heirs of the part of the Mother, which could not be, if it were not the old uſe, but a thing newly created; The like law of lands, of the cuſtome of Burrough English, Gavelkind, &c. Feoffment to his own uſe, the old uſe remaines.

Fitz. N. B. 1. 156. b. 48 If Tenant by Receipt upon default of Tenant for life appeare, and is received and pleads, and after loſeth by action tried, &c. Yet the Tenant for life may have a Quod ei deforceat upon the Statute of Weſt. 2. cap. 4. for the judgement is given againſt him for his default. Tenant by receipt.

Dyer 2. 1, 2. 6 H. 8. 49 If a Rent-charge be granted out of land pro conſilio impendendo, and the Grantée is afterwards attainted and committed to priſon, yet he ſhall not loſe the rent; for he may give counſel as well in priſon as at large. Rent charge. Priſon in bar.

Dyer 30. 204. 28 H. 8. 50 The Feoffées to an uſe make a leaſe for life rendring rent, before the Statute of Uſes; in this caſe, Ceſtuy que uſe (who now hath the reverſion *Ceſty que uſe*

reverſion in poſſeſſion) ſhall diſtraine and make Avowry for the rent, without attornment: So it is if they had granted a rent upon condition, the Grantee (after the Statute) ſhould have holden by the condition, in ſuch plight as he did before.

Law-day. Warren. 51 There are three Coparceners of a Mannor, and the King grants them a Law-day, and they afterwards make partiment of the Mannor, yet ſhall they ſtill retain the Law-day: So if a man hath a Mannor, and the King grants him free Warren within his Mannor, if he afterwards enfeoffe the King of his Mannor without the appurtenances, he ſhall ſtill retain the Warren; For a man may have Warren or a Law-day in another's land, per tot. Cur. Dyer 30. 109.

Action upon the caſe. Iſſue. 52 In an action upon the Caſe the Plaintiff was non ſuit, whereupon the Defendant by the Statute of 23 H. 8. 15. had judgement to recover his coſts, and after the record was removed by Errour in B. R. by the Plaintiff, and hanging that ſuit, the Defendant brings an action of Debt in C. B. upon a new original, and counts upon the record of an action upon the Caſe: And this matter was pleaded by the Defendant in this action, &c. And the better opinion of the Court was, that the action was maintainable (notwithſtanding the writ of Errour) becauſe it was brought upon a new original. Dyer 32. 5. 28, & 29 H. 8.

Frankalmoign. Common Prayer. 53 Albeit the Lyturgie or book of Common Prayer was altered by the Statutes of 2 & 3 Edw. 6. cap. 1. 5 & 6 Edw. 6. cap. 1. and 1 Eliz. cap. 2. yet the tenure in Frankalmoign remains the ſame, and ſuch Prayers duo Divine Service ſhall be ſaid and celebrated, as in all times ſhall be authorized by Parliament; yea although the tenure be (as Littleton hath it, Sect. 137.) A chanter un Meſſe, &c. ou a chanter un placebo & dirige, yet if the Tenant ſay Prayers in ſuch a form as is lawfully authorized, it ſufficeth: And as Littleton ſaith, Sect. 119. in caſe of ſoccage, the changing of one kind of temporal ſervices into other temporal ſervices altereth neither the name nor the effect of the tenure, ſo the changing of Spiritual ſervices into other Spiritual ſervices, neither altereth the name or effect of the tenure in Frankalmoign: For albeit the tenure in Frankalmoigne was reduced by the ſaid Statutes to a certainty contained in the book of Common Prayer, and now ſince to an uncertainty again by extemporary Prayers; yet ſeeing the original tenure was in Frankalmoigne, and the change was, and is by generall conſent in Parliament, whereunto (as is preſumed) every man is party, the tenure remains as it was at firſt. Co. Inſt. pars 1. 95. b. 2.

Tenements deviſable. 54 Tenements in London deviſable by cuſtome, come into H. 8. hands by the diſſolution of Abbies, and after the King grants them to hold in chiefe by Knights ſervice; In this caſe, a Deviſe of the whole is ſtill good againſt the heir; but quære, whether it be ſo againſt the King for wardſhip or primer ſeiſin, by reaſon of the ſaving in the Statute of 32 H. 8. cap. 1. Dyer 155. 21. 4, 5 P. M.

Verdicts returned. 55 The Clerk of the Aſſiſe may, notwithſtanding the death of both the Juſtices of Niſi prius, deliver in Court the Records of the Verdicts taken before the ſame Juſtices in the Circuit, &c. Dyer 163. 54.

Death of a Defendant. 56 In a Replegiare, or an Aſſiſe againſt two, judgement ſhall not be arreſted by the death of one of the Defendants after the laſt continuance, but ſhall be entred againſt the ſurvivor. Dyer 175. 24.

Partition. 57 Joyntenants and Tenants in Common cannot ſince the Statute of 31 H. 8. 1. make partition by Parol, no more than they could before, for albeit by that Statute they are compellable to make partition, yet it alters not the Common Law in that caſe. Co. lib. 6. 12. *Morrices* caſe.

Aſſets. 58 In debt upon an obligation againſt the heire, it is no plea to ſay, that the Executors have aſſets. Vide Dyer 207. 15. Dyer 179. 43. Dyer 204. 2.

59 A

Dyer 217. 61. 4 Eliz. 59 A Venire facias with Proviſo was returned, ſerved, and put upon the file, and two houres after a Pluries venire facias, which was afterwards purſued by the Plaintiff was alſo returned and filed, each party alſo purſue their Habeas Corpora, which are likewiſe returned; Howbeit the Plaintiff failed of his Jurat. continuand. yet this was adjudged no diſcontinuance, becauſe the continuance by the Defendant ſufficed, and there is no diverſity by the entry of the one, or of the other. *Venire facias.* Diſcontinuance.

Dyer 229. 49. 6 Eliz. 60 A Feme dies before Livery ſued, yet (in this caſe) the Baron ſhall be Tenant by the Courteſie, and ſhall ſue livery. Tenant by courteſie.

Dyer 243. 55. 8 Eliz. 61 If there be three Coparceners, and one of them aliens her part, another of them brings a writ of Partition againſt the Alienée, and the third Coparcener upon the Statute; per Curiam it ſhall abate, becauſe in this caſe a writ of Partition lyeth at the Common Law, as it did before the Statute. Partition.

Dyer 316. 3. 16 Eliz. 62 The Q. was ſeiſed of Whaddon Chaſe in Com. Bucks, and the Lord Gray was Lieutenant there in fée, and he and his Anceſtors, and their Keepers had by preſcription uſed to hunt ſtray Deere in the Demeſnes of the Mannor of Salden adjoyning, as in Purlewes, the Mannor of S. comes into the Queens hands, who grants it to Forteſcue in fée with free Warren within the Demeſnes thereof, Ita quòd nullus intret in warrennam illam ad fugandum ſine licentia F. And it was held, that the unity of poſſeſſion in the Queen of the Chaſe and the Mannor of S. did not extinguiſh the purlew, and that the clauſe of Ita quòd, &c. was not to be intended againſt the Queens Keepers, but other Subject onely: So that, whereas Forteſcues ſervant killed the ſervant of the Keeper for chaſing there; it was not juſtifiable by the Statute de Malefactoribus in parcis & Warrennis. *De malefactoribus in parcis.*

44 Perſonal things cannot be done by another.

Co. Inſt. pars 1. 66. b. 3. 1 A ſingle Corporation conſiſting of one perſon onely may do Homage; as a Biſhop in right of his Biſhoprick, an Abbot or Prior in right of his Monaſtery, &c. But no Corporation aggregate of many perſons capable (be the ſame Eccleſiaſtical or Temporal) can doe Homage, as a Deane and Chapter, Major, and Cominalty, and the like; becauſe Homage muſt be done in perſon, & a Corporation aggregate of many cannot appeare in perſon; for albeit the bodies naturall, whereupon the body politique conſiſts, may be ſeen, yet the body politique or corporate it ſelfe cannot be ſeen, nor do any act but by attorney, and homage muſt ever be done in perſon, &c. Corporations ſingle and aggregate.

Littl. §. 91. Co ib. 68. a. 2 The Steward or Bailiff of a Mannor may take fealty for the Lord: but Homage cannot be made, ſave unto the Lord himſelfe in perſon: and therefore Bracton ſaith (lib. 2. fol. 80.) Sciendum eſt, quod non per procuratores, nec per literas fieri poterit homagium, ſed in propria perſona tam Domini, quam tenentis, capi debet & fieri. Homage perſonal.

Co. ibid. 104. b. 4. 3 The ſervice of Homage is ſo nearly annexed to the perſon, as well of the Lords ſide, as of the Tenants, that the Tenant ought to ſeek the Lord, to the end he may do him Homage, if the Lord be within England: And therefore Bracton ſaith (lib. 2. 8.) Et ſciendum eſt, quod ille qui homagium ſuum facere debet, obtentu reverentiæ quam debet Domino ſuo, adire debet Dominum ſuum, ubicunque inventus fuerit in regno vel alibi, ſi poſſit commodè adiri, & non tenetur Dominus quærere ſuum tenentem, & ſic debet homagium ei facere, &c. There is the ſame law of Fealty: It is otherwiſe of rent, for that is not perſonal, but may be paid and received by another, or tendred upon the land, &c. Homage perſonal.

Litt. §. 153. & 157. Co. ib. 107. a. 3. 4 Grand Serjeancy is a ſervice to be done to the royal perſon of the King, and therefore cannot be perform'd by a Deputy, without the Grand Serjeancy.

the Kings ſpecial licence, or in ſome ſpecial caſes; becauſe the high and great offices, whereof that tenure doth for the moſt part conſiſt, ought to be performed in proper perſon: Yet he that holdeth to ſerve him in his warre, or by Cornage may make a Deputy, &c.

Joint joynters. 5 If two Joyntenants within age make feoffment in fée, they may enter joyntly in their lands, or may joyne in a writ of right, but they cannot joyne in a Dum fuit infra ætatem; becauſe the nonage of the one is not the nonage of the other. Co. ib. 337. a. 4.

Livery. 6 If A. is to make a feoffment to B. and C. and their heirs without déed, and A. makes livery to B. in the abſence of C. in the name of both, and to their heirs, this livery is void to C. becauſe a man being abſent cannot take a Freehold by a livery, but by his Attorney being lawfully authorized by déed to receive livery; unleſſe the feoffment be made by déed, and then the livery to one in the name of both is good. Co. Inſt. pars 1. 49. b. 3.

Demiſe of goods. 7 If a man demiſe ſheep or other ſtock of Cattle, or any other perſonall goods for a time, and the Leſſée covenants for him and his Aſſignes, at the end of the time, to deliver ſuch like cattle or goods, as good as the things demiſed were, or ſuch a price for them, and the Leſſée aſſignes the ſheep, or, &c. over; This covenant ſhall not binde the Aſſignée; becauſe it is but a perſonal contract, and there wants that privity, which is betwixt the Leſſor and Leſſée and his aſſignes of land, in reſpect of the reverſion; for in caſe of a leaſe of perſonal goods there is not any privity, nor any reverſion, but méerly a thing in action in the perſonalty, which cannot binde any but the covenantor himſelfe, and his Executors, and Adminiſtrators which do repreſent him: So it is alſo, if a man demiſe an houſe and land for yeares with a ſtock or a ſum of money, rendring rent, and the Leſſée covenants for him, his Executors, Adminiſtrators, and Aſſignes to deliver the ſtock or ſum of money at the end of the terme, yet the Aſſignée ſhall not be charged with this covenant; for, albeit the rent reſerved were increaſed in reſpect of the ſtock or the ſum, yet the rent doth not iſſue out of the ſtock or ſum, but out of the land onely; and therefore, as to the ſtock or ſum, the covenant is perſonal, and ſhall only binde the Covenantor, his Executors, and Adminiſtrators, and not the Aſſignée, &c. Co. l. 5. 16. b. 4. *Spencers* caſe.

Revocation under a mans own hand perſonal. 8 There is a diverſity betwixt conditions, which are perſonal and individuall, and cannot be performed by any other; and conditions, which are not ſo inſeparably annexed to the perſon, but that they may be performed by any other; as it was reſolved in the caſe of Thomas Duke of Norfolk (who in Anno 11 Eliz.) conveyed his land to the uſe of himſelfe for life, and after to the uſe of Philip Earle of Arundel his eldeſt ſonne in taile, with divers remainders over, with Proviſo, that if he ſhould be minded to alter and revoke the ſaid uſes, and ſignifie his minde in writing under his owne hand and ſeale, ſubſcribed by three credible witneſſes, that then, &c. And after the ſaid Duke was attainted of High Treaſon, &c. In that caſe, the proviſo or condition was not given to the Queen by the Act of 33 H. 8. becauſe the performance of it was perſonal, and inſeparably annexed to the perſon, viz. to ſignifie his minde by writing under his own hand, which none could do, but the Duke himſelfe: It is otherwiſe of payment of money, delivery of a ring or ſpurs of gold, or the like; for they may be paid, delivered, or tendred by others, &c. Vide 55. 109. Co. l. 7. 13. a. 1. *Engleſields* caſe.

A Retraxit perſonal. 9 A Retraxit cannot be entred, unleſſe the Plaintiff or Demandant be in Court in proper perſon; for the entry is, quòd quærens in propria perſona ſua venit & dicit, quòd ipſe placitum ſuum prædictum ulterius proſequi non vult, ſed ab inde omnino ſe retraxit, &c. And therefore a Retraxit cannot be acknowledged by an Attorney. Co. l. 8. 58. a. *Beechers* caſe.

10 There

Co. lib. 9. 75. b. 4. Combes caſe.

10 There is a diverſity betwixt a generall and abſolute power and authority, as owner of the land, and a particular power and authority by him which hath but a particular intereſt; as a Copiholder being owner of the land according to the cuſtome, may ſurrender his Copiholdland by Attorney; but if A. be Tenant for life, the remainder in taile, &c. And A. hath power to make leaſes for 21 yeares, reſerving the ancient rent, &c. he cannot make a leaſe by letter of Attorney by force of his power; becauſe he hath but a particular power, which is annexed to his perſon: And ſo it was reſolved in the Lady Greſhams caſe at the Aſſiſes in Suffolk, 24 Eliz. by Wray and Anderſon Chiefe Juſtices, and Juſtices of Aſſiſe there. Surrender by Attorney.

Co. lib. 9. 76. a. 1. Combes caſe.

11 Some things are ſo inſeparably annexed to the perſon of a man, that he cannot do them by another, as the making of Homage and Fealty: So it is holden in the 33 E. 3. tit. Treſpaſs 253. that the Lord may beate his Villein for cauſe or without cauſe, and the Villein ſhall have no remedy; but if the Lord command another to beate his Villein, the Villein ſhall have an action of Battery againſt him that ſo beats him. Villein.

Co. Ibid.

12 If the Lord diſtrain the Cattle of his Tenant, when nothing is behind, the Tenant for the reſpect and reverence which belongs to the Lord, ſhall not have an Action of Treſpaſs vi & armis againſt the Lord; but if the Lord in that caſe command his Bailiff or Servant to diſtrain him, when nothing is arrear, the Tenant ſhall have an Action of Treſpaſſe vi & armis againſt the Bailiffe or Servant, &c. 2 H.4.4. 11 H.4.78. 1 H.6.6. 9 H.7.14. Wrongful diſtreſſe.

Fitz.N.B.25.c.

13 It ſeems, that before the Statutes, which grant that a man may make an Attorney, &c. the Juſtices would not ſuffer either Plaintiffe or Defendant, Demandant or Tenant to make attorney in any ſuit, or in any Court, &c, becauſe the words of the Writ command the Defendant to appear, which ought alwayes to be underſtood in proper perſon; and at this day alſo a mans reall ſuit at a Leet, or Sheriffs turne, cannot be done by Attorny, but ought alwayes to be in proper perſon, &c. Howbeit before thoſe Statutes the King by his Prerogative might have granted to a man to make an Attorney in every action or ſuit, as well to the Tenant or Defendant, as to the Demandant or Plaintiff, and might have directed his writs or letters to the Juſtices for that purpoſe, &c. No Attorney allowed by the common Law.

Fitz.N.B.25.d.

14 If the Tenant for terme of life be impleaded in a præcipe quod reddat, he in reverſion may pray to be received to defend his right in default of the Tenant, or upon his faint pleading; but in this caſe he cannot pray by his Attorney to be received without a Writ out of the Chancery directed to the Juſtices for that purpoſe, upon ſome cauſe alleadged in the ſaid Writ, &c. No receipt by attorney.

22 E. 4. 34. Finch 16.

15 A man cannot excuſe himſelfe of a contempt (as of not ſerving the Kings proceſſe, of reſcuing a Priſoner from the Sheriffe or other Officer, or the like) by Attorney, but he ought to appeare thereupon in proper perſon, &c. Anſwer of a contempt perſonal.

Co. l. 9 96. b. 4. Sir George Reynells caſe.

16 The office of Marſhal of the Marſhalſie cannot be granted for yeares; becauſe it is an office of great truſt annexed to the perſon, & concerns the adminiſtration of Juſtice, and the life of the Law, which is to keep ſuch as are in execution in ſalva & arcta cuſtodia, to the end they may the ſooner pay their debts; And this truſt is individual and perſonal, and therefore cannot be tranſferred to Executors or Adminiſtrators; For the Law will not confide in perſons unknown; for the ordering of Matters, which concern the adminiſtration of Juſtice, &c. 45. 6. The office of the *Marſhalſie* perſonal.

Personal service not apportioned or multiplyed.

17 If a man hold land by the personal service of being Sewer, Carver, Butler, &c. to his Lord, or when the Tenant is bound by his tenure, Ad convivandum Dominum suum & familiam suam semel in anno, or ad æquitandum cum Domino suo, in Com. N. sumptibus suis propriis (vide 10 E. 3. 23. in John de Bromptons case) by alienation of parcel of the land, the service shall not be apportioned or multiplyed; because such services are personal, and are to be personally performed by one man only: Howbeit purchase of parcel by the Lord shall extinguish them. Co. l. 8. 105. b. 4. in John Talbots case.

Fliezers office personal.

18 The office of Fliezer cannot be extended upon a Statute, or Elegit, albeit it is a Franktenement, for which an Assise lyeth; because it is an office of trust and personal. Dyer 7 b. 28 H. 8. 20.

Several torts, several actions.

19 An action upon the Case was brought by two, for that the Defendant called them two false Knaves and Thieves; Here, the action was not well brought joyntly, for that the wrong done to the one, was not the wrong done to the other; and therefore they ought to have severed in actions, as in case of false imprisonment. Dyer 19. 111. 28 H. 8.

Thing in action cannot be transferred.

20 The reason why a thing in action cannot be transferred or granted over to another, is, because it is so annexed to the person, that it cannot be severed from him, nor by any meanes prosecuted but in his name, as an Obligation, Statute, Recognizance, or the like: So if a man hath an Advowson, and when it is void, the Patron grants proximam nominationem, Presentationem, & Institutionem, cùm primò & proximè vacuerint; In this case, the Grantée shall not have that Presentation, because it is a thing in action, which the Patron could not transfer, but the next to it he shall have, which was the first that could be granted. Dyer 26. a. 166. 28 H. 8. & 282. 28. 11 Eliz. & 300. 36. 13 Eliz.

45 They cannot be granted or transferred over, as matters of pleasure, ease, trust, and authority.

To hunt, way, to dye, &c.

1 A license to hunt in my Parke, to go to Church over my ground, to come into my house to eat and drinke with me, cannot be granted over: So of a way granted for life over my ground. Finch 17. 12 H. 7. 25. 7 H. 4. 36.

Personal offices of trust.

2 The Patentée for life of an office of trust, as to be a Chamberlain of the Exchequer, Squire of the body, &c. cannot assigne over, unless it be specially limited in his Patent, that he may: And the reason, why (regularly) he cannot assigne it over to another, is, because he may grant it to one in whom the King cannot confide, or that will be negligent, &c. Finch, ibid. 11 E. 4. 1.

Offices of skil.

3 The Keepership of a Parke, Stewardship, Bailiwick of Husbandry, &c. for life cannot be granted over, because they are offices that require skill and diligence. Finch, ibid. 12 Eliz. 179.

An act.

4 A. licenceth B. to do an act; B. cannot grant this licence to another. Finch, ibid. Br. licences, 25.

A warrant of Attorney.

5 A warrant of Attorney is made to one to deliver seisin, he cannot grant that authority over to another. Finch, ibid. 12 H. 8. 12.

Arbitrators.

6 Arbitrators cannot assigne their power over; And therefore they ought to make so certain an end of the difference, that they may leave nothing to be further determined either by the parties themselves, or others; for they being Judges of the case, their judgement ought to be certaine. Co. l. 5. 78. a. 1. Samons case.

Office of Marshal.

7 The office of Marshal of the Marshalsie being an office of trust, &c. cannot be transferred to another, but ought alwayes to be granted for life, and to be executed by none but the Grantée himselfe; And therefore a lease for yeares of that office is void, for then it may fall into the hands of Executors or Administrators; and in matters concerning the administration of Justice, the Law will not repose confidence in persons unknown, &c. Vide 44. 16. Co. l. 9. 96. b. 4. in Sir George Reynels case.

Dyer 7. b. 8 A Filizers office cannot be alened, becauſe it is an office of truſt and perſonal. Vide 44. 18. Filizer.

Hob. 13. Sir *Daniel Norton* and *Simmes*. 9 A Sheriffe in making an Under-sheriffe doth implyedly give him power to execute all the ordinary offices of the Sheriffe himſelfe, that may be transferred by Law, as ſerving of Proceſſe, Executions, or the like; Howbeit, the Under-sheriffe cannot deale in a Writ of Rediſſeiſin, becauſe in that the Sheriffe is a Judge, not in a Writ of Waſte, where the Sheriffe is commanded to go to the place waſted, becauſe theſe are places of truſt, and perſonal to the Sheriffe himſelf. Sheriffe.

Hob. 134. *Coventry* and *Woodhal*. 10 The putting of an Apprentice to one man rather than to another, is a matter of great truſt for his dyet, health, and ſafety; And therefore (it ſeems) that truſt cannot be transferred without conſent of all parties intereſted. Apprentice.

46 They being once ſuſpended, or diſcharged for a time, are for ever after extinct.

Pl. Co. 36. a. 3. *Plats* caſe. 5 E. 6. Br. Eſcape 45. 1 Where the Defendant is once Impriſoned upon an execution, and makes an eſcape, the Plaintiff ſhall never after have remedie againſt him again, but ought to take his remedie againſt the Sheriffe; For, if a perſonal thing be once in ſuſpence, and the perſon of a man diſcharged of a perſonal thing for a time, that is a diſcharge for ever; as if the Debtée makes the Debtor and another, which ſurvives the Debtor, his Executors, yet the debt is extinct for ever, &c. One in execution enlarged. A debtor, an Executor.

Dyer 140. Pl. 49. 2 A thing or action perſonal being once ſuſpended (though but for an houre) is extinct and gone for ever, when it is by the act and conſent of the party himſelfe, who hath the thing ſuſpended, as a Rent-ſecke, Rent-charge, or the like, which are perſonal things, and againſt common right: So likewiſe if a Feme, Obligor, or Obligée marry with the party, and after they are divorced, Cauſa præcontractus, the debt is extinct, as it is ruled in 11 H. 7. So if a man grant to another a Rent-charge of 10 l. out of the Manor of Dale, and the Grantée by his Will deviſeth, that the Grantor ſhall retain five yeares rent for a Legacy of 50 l. and dies; wherby the rent is ſuſpended for thoſe five yeares: In Dyer fo. 140. it ſeems to be the better opinion, that both the land and perſon are for ever after diſcharged thereof. A perſonal charge extinct by ſuſpenſion.

Dyer 371. 6. 23 Eliz. 3 In debt upon the condition of an Obligation conſiſting of divers points, if the iſſue be joyned upon the breach of one point, which is found againſt the Plaintiff, and whereupon he is barred; Albeit all the other points of the condition are broken, yet he ſhall never ſue the obligation againe. Obligation extinct.

Hob. 10. *Fyer* againſt *Gildridge*. 4 Where there were an Obligée and two Obligors, the Obligée made the wife of one of the Obligors his Executrix, and died, the Executrix adminiſtred; In this caſe the action of Debt againſt the other Obligor is (at leaſt) ſuſpended, and then the Rule is, A perſonal action once ſuſpended, is for ever after extinct. Vide infrà 54. 36. Debt extinct.

Hob. 131. *Robins* & *Barns*. 5 In a Quod permittat proſternere quandam domum, that by being new built, hindred a light of the next houſe by over-hanging; upon the iſſue and verdict it appeared, that the Defendant had built the ſaid houſe upon the old foundation of an houſe which had bin built there before, and had bin pulled downe (becauſe ruinous) by one, that was then owner of both houſes: And it was the opinion of the Court, that the unity of poſſeſſion of both houſes in one man did ſuſpend that eaſement, ſo as the Defendant could not be charged with any damage, but for what ſhould be cauſed, by making it hang over more than it did before; for that eaſement being once ſuſpended, is gone for ever, albeit the houſes come afterwards into ſeveral hands. Nuſance.

47 They

47 They dye with the perſon.

Waſte. 1 If the Tenant doth Waſte, and he in the reverſion dieth, the heire ſhall not have an action of Waſte for the Waſte done in the life of the Anceſtor, nor a Biſhop, Maſter of an Hoſpital, Parſon, or the like, for Waſte done in the time of the Predeceſſor: So if Leſſee for yeares doth Waſte and dyeth, an action of Waſte lyeth not againſt the Executor or Adminiſtrator, for Waſte done before their time, &c. Co. Inſt. part 1. 53. b. 4.

Action of accompt. 2 Albeit in an action of accompt againſt a Guardian in Soccage, &c. the Defendant cannot wage his Law, yet in reſpect of the privity of the matters in accompt, and the diſcharge reſting in the knowledge of the parties thereunto, an action of accompt lyeth neither againſt the Executors of the Accomptant, nor at the Common Law for the Executors of him, to whom the accompt is to be made, but that is holpen by the Statute of Weſt. 2. cap. 23. And it hath been attempted in Parliament to give an action of accompt againſt the Executors of a Guardian in Soccage, but never could be effected. Co. ib. 90. a. 2. Rot. Parl. 50 E. 3. nu. 123.

Annuity and rentcharge. 3 An annuity is a yearly payment of a certain ſum of money granted to another in fee, for life or yeares, and charging the perſon of the Grantor onely, but doth not enure to the Grantee onely; for his heire, and his and their Grantee ſhall have a writ of Annuity; but if a Rent charge be granted to a man and his heires, he ſhall not have a writ of Annuity againſt the heire of the Grantor, albeit he hath aſſets, unleſſe the grant be for him and his heirs. Co. ib. 144. b. 3.

Diſſeiſor. Releaſe. 4 If a Diſſeiſor make a leaſe for life, the remainder in fee, and the Diſſeiſee releaſeth unto the tenant for life all his right, this releaſe ſhall enure to him in remainder; becauſe as to this and ſome other purpoſes, they are but as one Tenant in Law; Howbeit if the Diſſeiſee releaſe all actions to the Tenant for life, after the death of the Tenant for life, he in the remainder ſhall not take benefit of this releaſe; for it extended onely to the Tenant for life, and ended with his life, as it was adjudged in Edw: Althams caſe, Co. l. 8. 148. So alſo if the Diſſeiſor make a leaſe for life, and the Diſſeiſee releaſe all actions to the Leſſee, this enureth not to him in the reverſion, &c. Co. ib. 275. b. 2.

Battaile in an Aiel. 5 In a writ of right, when the tryall is by Battaile, neither the Tenant nor Demandant ſhall fight for themſelves, but ſhall finde each of them a Champion to fight for them; becauſe if either the Demandant or Tenant ſhould be ſlain, no judgement could be given for the lands and tenements in queſtion: It is otherwiſe in an appeal; for here the Defendant ſhall fight for himſelfe, and ſo ſhall the Plaintiff alſo; becauſe there, if the Defendant be ſlaine, the Plaintiff hath the effect of his ſuit, viz. the death of the Defendant, &c. Co. ib. 294. b. 4.

Attornment in life of Grantor and Grantee. 6 Upon the grant of any thing, whereunto attornment is neceſſary, as of a Seigniory, rent, reverſion, remainder, &c. the attornment muſt be made during the lives both of the Grantor, and alſo of the Grantee; for if either of them die before attornment the grant is void: And the reaſon hereof is, for that every grant muſt take effect (as to the ſubſtance thereof) in the lifetime both of the Grantor, and of the Grantee whereas (in this caſe) if the Grantor dieth before attornment, the ſeigniory, rent, reverſion, remainder, &c. deſcends to his heire, and therefore after his deceaſe the attornment cometh too late; ſo likewiſe if the Grantee dieth before attornment, an attornment to the heire is void, for nothing deſcended to him; and if he ſhould take, he ſhould do it as a purchaſor, whereas, heires were added but as words of limitation of the eſtate, and not to take as purchaſors, &c. Co. ibid. 309. a. 4.

Election.

Co.lib.2.36.a. Sir *Rowland Heywards* case.

7 If a man for good consideration bargain, sell, and demise a reversion of land to the use of another for yeares, and the Grantor or Cestuy que use die before attornment or enrollment, the grant is in this case void or good at the election of Cestuy que use, voide, if taken at the Common Law by way of grant, because then there wants attornment, but good, by way of Bargain and Sale according to the Statute of Uses, (27 H. 8. cap. 10.) and because the Statute of 27 H. 8. cap. 16. (of Enrolments) extendeth not unto it, for that no estate of Frankstenement passeth, but onely an estate for yeares; And notwithstanding the death of the Grantor, and Cestuy que use (either one or both) the Executors or Administrators of Cestuy que use have power (as well as Cestuy que use himselfe) to choose, by which way they will claime, whether by way of grant at the Common Law, or by way of Bargain and Sale according to the said Statute of Uses, because Cestuy que use had immediately upon the grant a present interest in him, which he or (in case he be had died) his Executors before election might have assigned over, and for that he claims one and the same thing by two several wayes, it being in his or his Executors power to chuse which of them they please: It is otherwise, where the election is to chuse one of two several things, by one and the same way or title; for then nothing passeth before election, and that election must be made during the life of the parties: And therefore if I have three horses, and I give unto you one of my horses, in this case the election ought to be made in the life of the parties; for in as much as none of the horses is given in certain, the certainty (and therefore the property) commenceth by election: And with this agrées Bullocks case in the 10 of Eliz. 281. The Bishop of Sarum having a great Wood of 1000 acres (called Berewood) enfeoffs another of an house, and of 17 acres parcell of the said wood, and makes livery in the house: here, nothing passeth of the wood before election, and therefore his heire could not make election, &c.

Certificate of a Bishop.

Co.lib.69.a.1. in *Fo: Trollops* case.

8 If the Bishop make Certificate, and die before it be received, the Certificate is worth nothing, but the Successor ought to certifie anew. Fitz. 55.

Wager of Law. Executors.

Co.lib.9.87.a. 4. *Pinsons* case.

9 An action of Debt lyeth not against Executors upon a contract for the eating and drinking of the Testator; for that action dieth with him, because in that case, the Executors cannot wage their Law, as the Testator might have done; for a man shall never have an action against Executors, where the Testator might in his life time have waged his Law, because they cannot have the benefit of Law-wager, as he might have had, &c. 15 E. 4. Vide infrà 14.

Dignity restrained for life.

Co. lib. 11.1. The Lord *De la wares* case.

10 Of the family of the Lord De la Ware, there was Grandfather, Father, and Sonne, the Grandfather 3 H. 8. was summoned to the Parliament by Writ, and after in 3 E. 6. it was enacted, that the father should be disabled during his life from claiming any dignity, but was afterwards by Qu: Eliz. called to the Parliament, and sate in the House as a puisne Lord, and died, after whose death the sonne sued in Parliament to be restored to the place of his Grandfather, viz. betwixt the Lord Berkley and the Lord Willoughby of Ersby, and it was granted him: For there was a diversity taken betwixt a disability personal and temporary, and a disability absolute and perpetual: As if a man be attainted of Treason or Felony, this is absolute and perpetual disability by corruption of Blood, and shall barre any of his posterity to claime any hereditament in Fée-simple as heire unto him, or to any other Ancestor paramount him: But when a man is onely disabled by Parliament (without any attainder) to claime any dignity for his life, this is a personal disability for his life onely, and his heire after his death may claim as heire to him or to any of his Ancestors above him, &c.

And

And upon this diverſity, Thomas Lord De la ware, Anno 39 Eliz. was reſtored to the place in Parliament originally belonging to his Family.

Waſte by Baron. 11 Where a leaſe is made to the Baron and Feme for terme of life or yeares, the Feme ſhall not be puniſhed for Waſte, committed by the Baron after the Barons death. M. 3. E. 2. F.N.B. 59. i.

Battery. 12 When a corporal hurt or damage is done to a man, as to beat him, &c. if he or the party beaten die, the action is gone. Finch 17. 22 H. 8. 12.

Covenant by Lessor. 13 The Leſſor covenants to pay quit-rents during the terme, and dieth, his Executors ſhall not pay them; for it is a perſonal covenant which dieth with the perſon. 1, 2 P.M. 114. Finch 17.

Debt againſt Executors. 14 In debt againſt Executors, who plead fully adminiſtred, and they gave in evidence to the Inqueſt, that they had paid divers debts upon contracts made by the Teſtator, whereas this ſuit was upon an obligation, whereupon the Plaintiff demurres: And it ſeemed to the Juſtices that there was no cauſe to delay it, becauſe they were not compellable to pay ſuch debts, for that they die with the perſon, and the Plaintiff had judgement de bonis teſtatoris. Dyer 32. 2 28, & 29 H. 8.

Quit-rents. 15 The Leſſor covenants with the Leſſee to pay and beare all quit-rents, &c. not naming his Executors or Aſſignes: If the Leſſor die, his Executors are not bound, according to the opinion of divers Juſtices. Tamen quære. Dyer 114. 2. 60 1, 2 P. M.

Covenant implyed and expreſſe. 16 If there be Tenant for life, remainder in fee, and Tenant for life demiſe for 15 yeares and die, he in remainder enters, and the termor brings covenant againſt the Executors of the Leſſor upon the Demiſe onely, which is but an implyed covenant; and it was adjudged it would not lie, albeit the leaſe were by Indenture, unleſſe it had been broken in the life of the Teſtator, it is otherwiſe alſo of an expreſſe covenant: But an implyed covenant is perſonal, and dies with him. Vide Stat. 32 H. 8. 34. Note, that if the heire out the termor of the father, covenant lies againſt him upon the demiſe for the privity. Vide Max. 55. Dyer 257. 13. 9 Eliz.

Licence to retaile wines. 17 Queen Mary grants to one licence to ſell Wines by retaile with a non obſtante, the Statute of 7 E. 6. 5. and doth not limit how long, but there is a commandment in the Patent to the Officers to permit him to do it during his life: And it was held by Dyer and Sanders, that it was durante bene-placito onely, and that the pleaſure determined by the death of the Queen, the commandment ceaſed alſo by her death. Dyer 290. 22, 10 Eliz.

Warden of the Fleet. 18 Whitacres brings an action of Debt againſt the Executors of the Warden of the Fleet upon an eſcape in the life of the Teſtator, and it was adjudged it would not lie; becauſe the offence was but treſpaſſe, which died with the perſon; And by the Common Law debt dis not lie againſt the Warden, but an action upon the Caſe, until the Statute of 1 R. 2. 12. which gives debt againſt the Warden, but ſpeaks neither of heire or Executor: It is otherwiſe, where the recovery is in the life of the Warden. Dyer 322. 25. 15 Eliz.

48 Things do enure diverſly according to the diverſity of the time.

Purchaſe by Inhabitants. 1 The Pariſhioners, or Inhabitants, or probi homines de Dale, or the Church-wardens, are not capable to purchaſe lands (but goods they are) unleſſe it were in ancient time, when grants were allowed to paſſe by ſuch names. Co. Inſt. pars 1. 3. a. 2.

Grant to commoners. 2 An ancient grant by the Lords to the Commoners in ſuch a manner, that a way leading to their Common ſhould not be ſtraitned, was good; but otherwiſe it is of ſuch a grant at this day: And ſo in ancient time a gra nt Co. ibid.

grant made to a Lord, & hominibus ſuis tàm liberis quàm nativis, or the like, was good; but they are not of capacity to purchaſe by ſuch a name at this day, &c.

Co. l. 9 18. a. 3. in the caſe of the Abbot of *ſtrata Marcella*. A charter is interpreted, as the Law was when it was made.

3 When an ancient grant is general, obſcure, or ambiguous, it ſhall not be now interpreted, as a Charter made at this day; but it ſhall be conſtrued, as the Law was taken at the time, when ſuch ancient Charter was made, and according to the ancient allowance upon record. Vide ibid. many authorities in the point. Vide ſuprà, 25. 22.

Co. Inſt. pars 1. 21. b. 3. Frankmarriage, the fifth degree.

4 If the Donor give lands in liberum maritagium, reſerving a rent, this reſervation ſhall take no effect till the fourth degree be paſt, but after that time the rent ſhall be paid according to the reſervation. Litl. Sect. 19. Finch 18.

Co. ib. 147. b. 1. Rent-charge and ſeck.

5 If a man grant a rent out of Black-acre to one and to his heires, and grant to him, that he may diſtrain for this in the ſame acre for term of his life, this is a rent charge for his life, and a rent ſeck afterwards, Diverſis temporibus. Co. l. 7. 24. b. 3. Buts caſe.

Co. ib. 171. a. 3.

6 Judicis officium eſt, ut res ita tempora rerum
Quærere, quæſito tempore, tutus eris.

Co. ib. 178. a. 4. Frankmarriage out of uſe.

7 A gift in Frankmarriage was before the Statute of Weſtm. 2. a Fee-ſimple, and ſince that Statute, a Fee-taile; So as it is true, that the gifts do continue (as Littleton ſaith, Sect. 271.) but not the eſtates; for the eſtate is changed, as appeares in the ſame Author, Cap. Fee-taile: And albeit Littleton ſaith (Sect. 271.) that ſuch gifts have been alwayes ſince uſed and continued; yet now they are almoſt growne out of uſe, and ſerve now principally for Mot-cases, and queſtions in law, that thereupon were wont to riſe.

Co. l. 5. 119. b. 1. in *Whelpdales* caſe. *Non eſt factū*, when a deed was, and is no deed.

8 When an obligation was once a deed, and after before action brought becomes no deed, either by raſure, addition, or other alteration, or by breaking the ſeale, &c. In this caſe, although it were once a deed, yet the Defendant may ſafely plead Non eſt factum; for without queſtion, at the time of the plea, which is in the preſent tenſe, it was not his deed. 36 H. 8. Dyer 59. in an action of Debt upon an obligation againſt Hawood, the Defendant pleads non eſt factum, and before the day of apparance of the Inqueſt, the Mice had eaten the Label, unto which the ſeale was fixed, by the negligence of the Clerke, in whoſe cuſtody it was; Here, the Juſtices charged the Jurors, that if they found the deed to be deed of the Defendant at the time of the plea pleaded, they ſhould then give a ſpecial verdict, which they did accordingly.

Co. l. 6 15. a. 1. *Trepors* caſe. Leaſe and confirmation.

9 If A. Tenant for life, and B. in remainder in fee, joyne in a leaſe to C. Immediately after the delivery of the deed it is the leaſe of A. during his life, and the confirmation of B. and after the death of A. it is the leaſe of B. and the confirmation of A. according to the opinion of Dyer and Brown, Mich. 6, & 7 Eliz. fol. 234, 235.

Co. l. 6. 22. *Ambroſia Gorges* caſe. A daughter in ward during the life of her father.

10 If a man marry an Inheritrix of lands holden of the King in Capite, and hath iſſue by her a Daughter, and afterwards the Feme die, the Daughter ſhall not be in Ward, becauſe ſhe is yet heire apparant to her Father; But if the Father take another Wife, and hath iſſue a Son, then ſhall the Daughter be in ward to the King, becauſe the Son is now his heire apparent, and not the Daughter: And no heire apparent ſhall be in ward during the life of the Father.

Co. l. 7 18. a. *Calvins* caſe. *Ante-nati & Poſt-nati.*

11 The time of the birth of a man or woman is chiefly to be conſidered to make them a Subject borne, or not, and is (as it were) of the eſſence of a Subject born: For a man cannot be a Subject to the King of England, unleſſe at the time of his birth he was under the ligeance and obedience of the King of England, albeit the Kingdome of the King under whoſe

whose ligeance he was borne, do afterwards descend to the King of England: And this is the reason, that Ante-nati in Scotland (for that at the time of their birth they were under the ligeance and obedience of another King) are aliens borne, in respect of the time of their birth, &c.

Case in trial, tender of late. 12 Tender of the rent upon the land before the Distresse, makes the Distresse tortious; tender after the Distresse and before the imparkment makes the detainer, but not the taking tortious; tender after the imparkment makes neither the one nor the other tortious; for then it comes too late, in regard the cause is then put to the tryall of the Law to be there determined. Co. l. 8. 147. a. 4. The 6 Carpenters case.

13 Distinguenda sunt tempora, & concordabis leges. Anna Bedingfeilds case. Co. l. 9. 16. b.

Estate to the first issue in male. 14 Thomas Bowles in consideration of marriage with Anne Hide, covenants to stand seised of the Manor of D. to the use of himselfe and Anne for their lives, and after to their first issue male, and the heires male of his body, and after to the heirs male of the bodies of Thomas and Anne, &c. In this case, before Mac. had, Thomas and Anne were seised of an estate taile executed sub modo, viz. untill issue, and then by operation of Law, the estates were divided, viz. Thomas and Anne became Tenants for life, the remainder in taile to the issue, the remainder to the heirs male of Thomas and Anne, &c. Co. lib. 11. 80. a. 4. *Lewes Bowles* case.

Slanderous words. 15 A man brings an action upon the Case for these slanderous words Thou art an arrant Knave, a Cosener, & a Traitor, being all spoken together at one and the same time, and upon not guilty pleaded, the Jurors finde for the Plaintiff, and assesse damages generally for all the words, wherein they do well; for all those words taken together, make but one scandal, and albeit no action lieth for these words, Thou art an arrant Knave, a Cosener, spoken apart by themselves, yet being spoken at one and the same time, and coupled with the other words, and a Traitor, which are indeed actionable, they aggravate them and make them worse: Howbeit, if at one time the Defendant calls the Plaintiff Traitor, and at another time he calls him arrant Knave and Cosener, and the Plaintiff brings an action upon the Case, and alledgeth the said several words spoken at several times, as several causes of action; there, if upon not guilty pleaded, the Jurors assesse damages intirely, judgement shall be arrested for all; for he grounds his action upon two several scandals, whereas one of them is not actionable, &c. Co. l. 10. 131. a. 1. *Ja. Osborns* case.

A perquisite by the purchase of a Villein. 16 If a man hath a Villein in right of his wife, and the Villein purchase land, he shall have that perquisite in her right; but if the Villeine purchase it after issue had, then the Baron shall have the perquisite to him and his heires; because by the issue he is entitled to be Tenant by the Courtesie in his own right. Co. Inst. pars 124. b. 1.

49. *Quod prius est tempore, potius est jure.* Vide Max. 62. Pl. 10. 19.

Remitter. 1 One of the reasons of a Remitter is, because that title which is first and more ancient is always more sure and worthy: And therefore many books in stead of Remitter, say, that he is En son primer estate, or en son melior droit, or en son meliot estate, &c. or the like: For, Quod prius est, verius est, & quod prius est tempore, potius est jure, &c. Co. Inst. pars 1 347. b. 3.

Confirmation first, best. 2 The Lesse for life made a lease for thirty years, and after the Lessor and Lesse for life made a lease for 60 years to another, which lease for sixty yeares the Lessor did first confirme, and after the Lessor confirmes the lease for thirty yeares, and after the Tenant for life died within the thirty yeares: In this case, the lease for thirty yeares was determined by the death of the Tenant for life, and the Lesse for sixty yeares Co. ib. 296. a. 3.

yeares might enter; for that albeit the leaſe for ſixty yeares was the later in time, yet was it of greater force in Law; becauſe the Leſſor, who had power to confirm which of them he would, did firſt confirm the ſecond leaſe. Inter Unwel and Lodge, temps Eliz.

Co. l. 4. 89. b. 4. *Druries* caſe.

3 If a Counteſſe retain two Chaplains, thoſe two are onely capable of diſpenſation according to the Statute of 21 H. 8. cap. 13. And therefore if the Counteſſe retains a third, that cannot deveſt the capacity of diſpenſation, which was veſted in the two firſt; For albeit the Counteſſe may entertain as many Chaplains as ſhe will, at the Common Law, yet can ſhe not have more then two capable of Diſpenſations by force of the Statute; and reaſon requires, that he which hath longeſt ſerved, ſhall be firſt preferred; For, qui prior eſt tempore, potior eſt jure. The firſt Diſpenſations; Waſt void.

F. N. B. 142. f.

4 If a man purchaſe divers lands by one feoffment, which are holden ſeverally of divers Lords by Knight-ſervice, and after he dies, his heire within age, that Lord which ſhall firſt hap the Ward, ſhall have him, becauſe there is no priority: But if he purchaſe land, which is holden by Knight-ſervice of one Lord; and after purchaſe other land holden of another Lord by the like ſervice, and after die, his heire within age; In this caſe, that Lord ſhall have the Ward of the heire, of whom the land, which he firſt purchaſed, is holden; for that he held of him by a more ancient feoffment (viz. by priority) then he held of the other Lord of whom he held by poſteriority, &c. Priority of Wardſhip.

Co. l. 4. 66. b. 3. *Fulwoods* caſe.

5 If a man be bound in two Statutes, and the laſt Statute is firſt extended and put in execution; Yet the firſt Conuſee upon extent ſhall be firſt ſerved, and the laſt Conuſee ſhall ſtay till the firſt be ſatisfied. A former Statute firſt ſued

Dyer 32. 2. 28, & 29 H. 8.

6 In debt againſt Executors, who plead fully adminiſtred, and it was given in evidence by the Defendants, that they had paid divers debts upon contracts made by their Teſtator, and ſhewed not that they were paid before the Plaintiffs writ purchaſed, whereupon the Plaintiff demurres, and that was the chiefe reaſon why Judgement was given for the Plaintiff. Debt againſt Executors.

Dyer 133. 2. 1. 3, 4 P. M.

7 A man being Patron of a Benefice in right of his wife grants proximam advocationem to another, after which grant the Incumbent makes a leaſe of the Benefice for 60 yeares, reſerving rent to him and his Succeſſors under the value in the Kings books; afterwards the Patron, Grantor, and his wife together with the Ordinary confirme the Leaſe, and then the Incumbent is deprived for marriage, and the Grantee preſents his Clerk, who enters upon the Leſſee to avoid the leaſe; In this caſe, it ſeems his entry is congeable, becauſe the Grant preceded the leaſe. Grant of the next avoydance.

Dyer 232. 5. 7 Eliz.

8 If debt be brought againſt the Ordinary for the debt of the inteſtate, after notice he cannot diſpoſe of any of the goods to others, before he hath ſatisfied that debt, for which the action was brought againſt him. Ordinary.

Dyer 276. 52. 10 Eliz.

9 A Scire facias was brought by Baſſet againſt the Corporation of Torrington in Com. Devon. to repeal their Patent of Faires and Markets; But it was held, that a Puiſne Patentee ſhall not have a Scire facias to repeal a more ancient Patent, but è contrà. *Scire facias.*

10 Vide Hob. 7. Spendlowes and Burket, concerning the grant of an avoydance, and a leaſe of a Prebendary in Lincoln.

50 According to the diverſity of the ſame perſon.

Co. Inſt part 1. 8. 2. 1. in *Calvins* caſe. Co. ib. 129. 2. 3.

1 A man ſeiſed of lands in fee hath iſſue an Alien, viz. born out of the Kings ligeance, that iſſue cannot be his heire propter defectum ſubjectionis, albeit he be born within lawful marriage; neither yet ſhall he inherit Alien not inheritable.

herit to his Father or any other, although he be made Denizen by the Kings letters Patents: Nevertheless, if the same man be naturalized by act of Parliament, he shall not then be accounted in Law alienigena, but indigena, and shall be capable of inheriting, &c.

Corruption of blood for a time.

2. The same man may have some children capable of inheriting his lands after him, and others incapable, according to the several conditions, in which he stood at the several times, when he had those children: As if an Alien be made Denizen, the issue which he hath after the denization shall be his heire, and not the issue which he had before: So also, if a man hath issue a sonne before his attainder, and obtaineth his pardon, and after the pardon hath issue another sonne; here, at the time of the attainder, the blood of the eldest was corrupted, and therefore he cannot be heire; but if he die living his father, the younger sonne shall be heire; for he was not in esse at the time of the Attainder, and the pardon restores the blood, as to all issues begotten afterwards, &c. Co. ib. 8. a. 2.

Villain free for a time.

3. If Millenage be pleaded by the Lord in an action reall, mixt, or personal, and it is found, that he is no Millein, the bringing of a Writ of Ravin is no enfranchisement, because thereby he is to defeat the former judgement: and if in the mean time the Millain bring an action against the Lord; the Lord need make no protestation, so long as the record remains in force, for at that time he is free, &c. Co. ib. 127. b. 4

Juris utrum Warranty.

4. If a Juris Utrum be brought by a Parson of a Church, the collateral warranty of his Ancestor is no barre, for that he demandes the land in the right of his Church in his politique capacity, and the warranty descendeth on him in his natural capacity, &c. Co. ib. 370. a. 4

Warranty. Profession.

5. If a collateral Ancestor release with warranty, and enter into religion, now with the warranty binds; but if afterwards he be deraigned, then is the warranty defeated. Co. ib. 392. b. 3

Rent extinguished.

6. One that hath a rent charge going out of the wives land, releaseth it to the husband and his heires: Yet, in this case, the husband shall not have the rent: but the release shall enure unto him by way of extinguishment onely, as seisen in right of his wife. 14 H. 8. 6. Finch 18.

Grant and confirmation.

7. The Parson of Weston in Com. Gloucest. An. 9 El. demised his Rectory to W. Hodges, then Patron of the same Rectory, for 50 years, who Anno 14 Eliz. by his deed assigned it over to Sir John Throgmorton, & the Bishop confirms the lease, Anno 17 Eliz. in the life of the Lessor; And in this case it was resolved, that the assignment of the said lease so granted by the Patron, imports in it self both a grant, and also a confirmation of the terme; so that a deed of the same thing, by the same person, to the same person, and at the same time, shall enure to two several purposes, viz. to a grant of the interest, as Lessee, and to the confirmation of the same interest, as Patron: So also if Tenant for life grant a Rent-charge to him in the reversion in fee, and the Reversioner by his deed grant it over to another and his heires, this is a good grant and confirmation also to make the rent good for ever, in respect of the several relations that are in him in the reversion, viz. as Grantor of the rent, and as Reversioner in fee: In like manner, if the Disseisor make a lease for life, the remainder to the Disseisee, and the Disseisee grant the remainder over, this is a good grant and confirmation also, &c. Co. l. 5. 15. a. 3 Mewcomes case. Trin. 30 Eliz. in the Exchequer.

Precontract. Bastardy.

8. If a man marry with a woman that was formerly contracted with another, and hath issue by her, that issue in truth and in Law beares the surname of the Father: but if afterwards the Baron and Feme be divorced causa precontractus, then hath the issue lost the surname of the Father, because Cognomen majorum est ex sanguine tractum, and then is the issue a Bastard, and Nullius Filius. Co. l. 6. 66. a. 4 in Sir Moyle Finches case.

Member of Parliament.

9. A Member of Parliament, while he continues a Member, is free from arrests of his person; but when he ceaseth to be a Member, he may be arrested again, and albeit he being a Member be arrested upon an Dyer 60. a. 423. 36 H. 8.

execution for debt, yet that is no discharge of the debt, but after the Parliament he may be taken again by execution upon the same judgment.

Dyer ibid. 10 Regularly, the Lord may seise his Villein wheresoever he finds him, yet if he abide a yeare within ancient Demesne, his condition is altered, and the Lord cannot seise him: So while the Villein remains in the Kings presence, the Lord cannot seise him, but afterwards out of his presence he may; And these privileges the Law giveth to Villeins in favorem libertatis. Seisure of a Villein.

51 According to the diversity of severall persons. *Vide infrà*, 86.

Co. Inst. pars 1.46.a.3. 1 If Tenant in tails make a lease for yeares, reserving rent, and after take a wife & dis without issue; now as to him in the reversion the lease is meerly void; but if he enjoyd the wife of Tenant in tayle of the lands (as he may be, though the estate tails be determined) now is the lease as to ỹ tenant in dower (who is in, as of the estate of her husband) revived against, as against her; for, as to her the estate tails continueth, and she shall be attendant for the third part of the rent and services, &c. So it is if Tenant in tails make a lease for years ut suprà, and dieth without issue; his wife enseint with a sonne, he in the reversion enters, against him the lease is void; but after the sonne is born, the lease is good, if it be made according to the Statute of 32 H. 8. cap. 28. and otherwise is voidable. Lease by tenant in tail good, & void to several persons.

Co. ibid. 46.a. 4. 2 The King made a gift in tayle of the Mannor of Eastfarleigh in Kent to W. to hold by Knights service; W. made a lease to A. for 36 years, reserving 13 pounds rent; W. died, his sonne and heire of full age, all this was found by office; As to the King, this lease is not of force; for he shall have his primer seisin, as of lands in possession, but after livery the lease may enter; And if the King in tails accept the rent, the lease shall binde him, and shall be good as to him, &c. And so it was adjudged in Auskens case, Pa. 2, & 3 Ph. and M. as Mr. Plowden reported to the Lord Coke. The like.

Co. ibid. 3 If tenant in fee take wife, and make a lease for yeares, and dieth, the wife is endowed, she shall avoid the lease, and it shall be void as to her; but after her decease the lease shall be in force again against him in reversion, &c. Lease void as to the Feme.

Co. lib. 107.a.2. 4 Tenure by Cornage of a common person, is Knight-service, but of the King, is Grand Serjeanty; so as the royal dignity of the person of the Lord maketh the difference of the tenure. Cornage.

Co. lib. 188.a.1. 5 If an husband, wife, and a third person bid purchased lands to them and their heirs, and the husband before the Statute of 32 H. 8. cap. 1. had aliened the whole land to a stranger in fee, and died; In this case, the wife and the other joyntenant were joyntenants of the right, but in severall manners according to their severall interests, viz. the wife had right of action, and the other joyntenant right of entry; For at the Common Law the alienation of the husband was a discontinuance to the wife of the one moity, and a disseisin to the other joyntenant of the other moity: Howbeit these differing rights might well stand together in joynture; for they are joyntenants of the right, because they may joyne in a writ of right, &c. Joyntenants of a right, of differing natures.

Co. lib. 202.a.3 Co. l. 8. 43, 44. Wiscisgham's case. 6 If a man seised of lands in right of his wife, maketh a feoffment in fee by deed indented, upon condition that the Feoffee should before a certain day demise the lands to the Feoffor for his life, &c. If the condition be broken, the Feoffor may re-enter, and shall be again seised as in his former estate, viz. in right of his wife: But in case the Feoffee Entry of several persons several effects.

the

die before entry, albeit the heire of the husband enter for the condition broken, yet it is impossible for him to have the estate, that the Feoffor had at the time of the condition made; for the Feoffor had an estate in the right of his wife, which commenced by the coverture, and with the coverture was dissolved; And therefore when the heire entreth for the condition broken, and defeateth the Feoffment, his estate doth vanish, and the estate is thereupon immediately vested in the wife, &c.

e in taile. *rticeps criminis.*

7 If Tenant in taile and his issue disseise the Discontinuee of Tenant in taile: and Tenant in taile die, whereby the lands descend to the issue; In this case, the issue shall be remitted, and shall be in as Tenant in tail against every stranger, and shall deraign the first warranty; but not against the Discontinuee, because he was Particeps Criminis, 11 E. 4. 2. Finch 18. Co. Inst. part 1. 357. b. 2.

offment nd against ller him right

8 A Lessee for years may make a Feoffment, and by his feoffment a Fee-simple shall passe, and if a warranty be annexed to such an estate, albeit such a warranty cannot barre the Lessor, or his heirs, because it commenceth by disseisin; yet between the parties such a warranty availeth good; for thereupon the Feoffee may vouch the Feoffor or his heirs, as by force of a lineal warranty: And therefore if a Lessee for years or Tenant by Elegit, Statute Merchant, Statute Staple, &c. or a Disseisor incontinent make a feoffment with warranty, if the Feoffee be impeached, he shall vouch the Feoffor, and after him his heire also; because this is a covenant real, which binds him and his heirs to recompence in value, if they have assets by descent to recompence; for there is a feoffment de facto, and a feoffment de jure; And a feoffment de facto made by them, that have such interest or possession as is aforesaid, is good between the parties, and against all men, save onely against him that hath right, &c. Co. ib. 367. a. 3. Litt. §. 698.

The like.

9 If before the Statute of 1 R. 3. cap. 9. a man had granted a messuage with the appurtenances to certain Barretors for maintenance by a feoffment with warranty, by reason whereof the true Tenant durst not abide in the house, this warranty commenceth by disseisin, & shall not binde him that right hath; but some have said it shall be of force between the Feoffor and Feoffee, &c. Litt. §. 707. Co. ib. 369. a. 3

Lineal & collateral warranty.

10 If a man hath issue two sonnes, and is disseised, and the eldest son releaseth to the Disseisor by his deed with warranty, &c. and dies without issue, and after the father dies, this is a lineal warranty to the younger son; because the land by possibility might have descended from the eldest to the younger son; but in that case, if the younger son releases to the Disseisor with warranty, and dieth without issue, that is a collateral warranty to the eldest son, and also to the issue of his body; because the eldest son by no possibility, could convey the title of the land to himself by meanes of the younger: But in the same case, if the eldest son die without issue of his bodie, then the warranty is lineal to the issues of the body of the younger: And so the warranty that was collateral to some persons, may become lineal to others: And therefore if Tenant in taile hath issue three sons, and discontinue the taile in fee, and the second son releaseth by his deed to the Discontinuee with warranty, &c. and after the Tenant in taile die, and the second son die without issue, this is collateral warranty to the eldest sonne; but in case the eldest son die also without issue, it becomes a lineal warranty to the youngest, &c. Litt. §. 707. Co. ib. 371. b. 4.

Difference. Barres, Effects, several.

11 An Act of Parliament or the Common Law may make an estate void as to one person, and good as to another person; For example, if lands be given to the Baron and Feme, and to the heirs of their two bodies, and the Baron levy a fine with proclamations, and hath issue, and die; this fine by force of the Statute of 32 H. 8. cap. 36. shall bar the issue in taile, but it shall not bind the Feme, so that in respect of one it is a Litt. §. 708. Co. l. 1. 87. b. 1. *Corbets case.*

good barre, and in reſpect of another it is no barre: So alſo in a præcipe, if one be vouched; In that caſe, having regard to the Demaundant, the Vouchee is Tenant, and a releaſe to him from the Demaundant is good, but having regard to a ſtranger, he is not Tenant. and therefore a releaſe to him from a ſtranger is not good: Likewiſe, if one be poſſeſt of a terme for years as Executor, and ſurrender it; here, as to one reſpect the terme is extinct, and as to another reſpect it is aſſets, &c.

Co. l. 5. 60. a. 4. in *Gooches* caſe. 12 If a fraudulent conveyance be made to avoid a debt, the grant is void, as to the Creditor by the expreſſe proviſion of the Statute of 13 Eliz. cap. 5. but as to all other perſons it ſtands good. Fraudulent conveyance.

Co. lib. 6 78. b. The Lord of *Aburgavennies* caſe. 13 A. and B. are joyntenants for life, and judgement is given for C. againſt A. in an action of Debt, A. releaſeth to B. before execution; here, albeit B. is now in by the Leſſor, and not by A. and the eſtate of A. as to all ſtrangers, is determined, yet as to C. who hath the judgment (whereby the moity of A. was charged with the execution) the eſtate of A. (during the life of A.) hath continuance: But in caſe A. die before execution, B. ſhall hold it diſcharged, &c. A charge upon one of the Joyntenants.

Co. ibid. 79. a. 14 If there be two joyntenants in fee, and the one grants a Rent-charge in fee, and after releaſeth to the other; In this caſe, albeit to ſome intent he, to whom the releaſe is made, is in by the firſt Feoffor, and no degree is made betwixt them, yet as to the Grantee of the Rent-charge, he is in under the Joyntenant that releaſeth, and he that ſurvives ſhall not avoid it after the deceaſe of him that releaſeth. Vide M. 30. c. 8. Joyntenants, Rent-charge.

Co. ibid. 15 A. and B. are Joyntenants for life, the reverſion to C. judgement is given againſt A. in an action of Debt, A. releaſeth to B. B. dies, C. enters; Yet, as to him that hath the judgement, the eſtate of A. (ſo long as A. liveth) hath continuance. The like.

Co. ibid. 16 If the Baron being ſeiſed of a Rent or Common in fee, releaſe to the land Tenant, this rent is extinct, yet having regard to the Feme it hath continuance; for ſhe ſhall be endowed thereof. See there many authorities in the point; and Co. l. 7. 38. b. 3. Lillingſtons caſe. The like for Dower.

Co. l. 6 79. b. 4. Sir *Edward Phittons* caſe. 17 In the generall pardon of 43 Eliz. there was this proviſo, that any Clerk might make a Capias utlagatum at the ſuit of the Plaintiff againſt outlawed perſons, to the intent to compel the Defendant to anſwer, and that the party ſhall ſue a Scire facias, before the pardon in that behalfe ſhall be allowed; but this is onely as having regard to the Plaintiff; for as to the King; it is an abſolute pardon, and grant of his goods, &c. ſo that the pardon was available to diſcharge the Defendant againſt the King, but not to diſcharge him againſt the party Plaintiffe: As a Villain is diſabled againſt his Lord, but not as to any other. General pardon. Lord and Villain.

Co. lib. 8. 45. *Whittingbams* caſe. 18 If a Baſtard be ſeiſed of lands in fee, and make feoffment thereof, and after dies without iſſue: In this caſe, if livery were made by the Baſtard himſelfe in perſon, and ſo the feoffment executed by himſelfe, it ſhall ſtand good; but if livery were made by attorney, the lands ſhall eſcheat, &c. Baſtard. Feoffment. Livery.

Co. lib. 8. 145. *Davenports* caſe. 19 A. hath a Rectory, unto which a Vicarage is appendant, for certain yeares yet in being, and grants the next avoydance of the Vicarage to B. and after ſurrenders the Rectory to him in reverſion; In this caſe, albeit as to all ſtrangers, the eſtate of the Rectory is determined by the ſurrender, yet as to the Grantee of the next avoidance of the Vicarage it hath continuance; and if the avoidance happen within the terme, the Grantee ſhall preſent, &c. So alſo if the Leſſee for yeares grant a rent, and then ſurrender; yet for the benefit of the Grantee, the terme hath continuance; albeit in rei veritate it is determined. Grant of the next avoydance. Surrender after grant of a rent.

Franchise, Quo warranto.

20 In Avowrie, it is not necessary to shew to the Plaintiff by what title such a Franchise is claimed; but when a Quo Warranto is brought by the King, the Lord of the liberty ought to shew his title.

Co. l. 9. 29 b. 1. In the case of the Abbot of *Strata Mercella*.

Exception of Trees.

21 If Lands be demised to one for life, exceptis quercubus, ulmis, & fraxinis adhunc crescend: ultra crescentiam 21 annorum, &c. The Lessor may fell the great Timber so excepted, and then (fictione juris) as to the Lessee the Trees are divided from the franktenement, but as to all others they are parcel of the inheritance of the Lessor.

Co. l. 11. 50. a 2 *Richard Lifford's* case.

Severance of Trees.

22 If Tenant in Tail sells the Trees to another; that is a Chattel in the vendee, and his Executors shall have them, and in such case (fictione juris) they are severed from the land; but if Tenant in Tail die before actual severance, as to the issue in Tail they are parcel of his Inheritance, and shall go with it, neither may the Vendee then take them; and yet as to the Tenant in Tail himself, they were severed for a time.

Co. ibid.

Manor, grand, except an acre.

23 A man makes a Lease of a Manor, except an Acre this Acre is no part of the Manor, as to the Lessor, but as to him, that hath right to demand the Manor by an eygne title, it remaineth parcel, and therefore he shall make no forepriſe thereof in his Writ.

1. 2. P. M. 104. *Finch.* 18.

52 Relation is of great force in Law.

Ancestor and Heir; and the Testator, and Executor Correlativa.

1 If a man make a Lease for life to one, the remainder to his Executors for 21 years, the term for years shall vest in him; for even as Ancestors and heirs are Correlativa, as to inheritance: (as if an estate for life be made to A. the remainder to B. *in tail*, the remainder to the right heires of A. the Fee vesteth in A. as if it had been limited to him and his heires) even so are the Testator and the Executors Correlativa, as to any Chattel; And therefore if a Lease for life be made to the Testator the Remainder to his Executors for years, the Chattel shall vest in the Lessee himself; as well as if it had been limited to him and his Executors.

Co. Instit. pars 1. 54. b. 4. and 319. b. 1.

Frank-marriage.

2 A. Enfeoffes B. upon Condition, that B. shall make an estate in Frank-marriage to C. with one such as is the daughter of the Feoffor; In this Case, B. cannot make an estate in Frank-marriage; because the estate must move from the Feoffee, and there is not betwixt the Feoffee and the Daughter of the Feoffor the nèer relation of Blood, which is required betwixt the Donor and the seme Donee in Frank-marriage; for here the Daughter is not at all of the blood of the Feoffee.

Co. ibid. 219. b. 3.

Protection and Subjectio *relata* from the birth.

3 In matters of State, Subjectio, and Protectio are Relatives, and immediately upon the birth of a subject that relation begins; for ligeance doth not begin by the oath in a Leet; but comes into the world with a true subject, and he oweth it unto his Sovereign by birth-right; so also is the Soveraign bound from that very time to protect his subject: And therefore it is truly said, that Protectio trahit subjectionem, & Subjectio protectionem: And this is the reason, that ligeance cannot be local, or confined within the bounds of England onely; for wheresoever the subject is, there likewise is to be found the foresaid Relation; And therefore, Qui abjurat regnum, amittit regnum, sed non regem, amittit patriam, sed non Patrem patriæ: for, notwithstanding the abjuration, he oweth the King his ligeance, and he also remaineth within the Kings protection: because the King (if he please) may pardon and restore him to his Country again.

Co. l. 7. 4. b. 5. *Calvins* case.

Co. ibid. 9. b. 2

Summons and Resummons

4 For Continuance of Pleas upon demise of the King, there shall never be Resummons, or Reattachment, but where there was at first Sum-

Co. l. 7. 30. 4. 1. Discontinuance of Process.

Summons and Attachment; for these are Relatives, and answer in relation one to the other.

Co.l.8.85.b.8. Sir *Rich. Pexhals* case.

5 If A. devise to B. 10.l. per annum to be paid quarterly, and that B. shall keep his Courts, &c. A. hath an estate for life in this annuity; for officium and feodum are Relatives, and Concomitantia, and he shall have the like estate in the Fee, that he hath in the office. Office and the Fee, *relata.*

Co.l.10.104.b. 2. *Alfrid.* in *Denbawds* case

6 At the time of granting the Tales the principal Array must stand; for Tales are words of similitude, and have reference to a resemblance, which at that time ought to be in esse; and therefore if the Array be quashed, or all the Polls challenged and tried out, no Tales shall be awarded; for at that time they were not Quales; but in that Case a new Venire facias shall be awarded: Howbeit if at the time of granting the Tales the principal pannel did stand; and after is quashed, as aforesaid; yet the Tales shall stand; for it sufficeth, that they were Quales at the time of granting the Tales; and this appears in 34 H.6. Tit. Enquest. 30. Quales and Tales, *relata.*

Co.l.10.116. b.4. *Rob. Pilfolds* case.

7 This word Damna is taken in the Law in two significations, the one properly and generally, the other relative and strick; properly, as when costs of suit are also included in it, &c. But when the Plaintiff sheweth the wrong done unto him to the damage of such a sum, this is to be taken relative, for the wrong which is past before the Writ brought, and they are then to be assessed occasionis transgressionis prædictæ, and cannot extend to Costs of suit, which are future and of another nature, viz. to expences in Law, whereof no certainty can then be known. Damages, and the Wrong, *relata.*

Co.Inst.pars 1.338.b.4.

8 An Estate-tail cannot be discontinued, but where he, that made the discontinuance, was not once seised by force of the Tail (except it be by reason of Warranty, &c.) according to the Rule in Philosophie, Omnis privatio præsupponit habitum; for he cannot discontinue that estate, which he never had. Neither yet can a Parson discontinue the Fee-simple of his parsonage, because the intire, and Fee-right thereof was never in him. Discontinuance. Vide M.23. & 5.

Co. ibid.341. b.3.

Co. ibid.359. a 4.

9 If a Feoffment be made to two, and livery is made onely to one of them, but yet according to the deed; In this case, the livery shall enure to both; because the deed, whereunto the livery referreth, is made to both; Verba relata hoc maximè operantur per referentiam, ut in eis inesse videntur. Livery to one enures to both.

Pl.Co.70.b.2. in *Kedwellies* case against *Brand.*

10 Where Rent is reserved to be paid out of the Land at Dale upon Michaelmas day, & if it be behind 40 dayes after, that then it shal be lawfull for the Lessor to re-enter; In this case, it ought to be tendred at Dale a convenient time before Sun-set upon the last of the 40 dayes; for albeit it be not by expresse words, that if the Rent be behind and unpaid at Dale by the space of 40 dayes, &c. yet it shall have Relation to the place first named, and so the Law saith, that the Rent shall be paid at Dale the last of the 40 dayes, although it be not so expressed by plain words, Vide 131.5. Place of payment of Rent.

Dyer 14.69. 28 H.8. per *Shelley*, and *Fitz-herbert.*

11 The Termor-covenants by Indenture to build an House without words of Executors, the Term expires, and he dies; In this case, the Executors shall be charged; for they are co-relatives with him, and represent his person, it is otherwise of the heir, unlesse he be named: It is so likewise of an Obligation, because it is a present duty. See also Dyer 22. b.139.28 H.8. Per curiam. Executors chargeable without naming them.

Dyer 23.b. 146. 28 H. 8.

12 Two have a Term as Executors, and one of them grants all that he hath in the Land; In this case, the whole Lease passeth, because each Executor representing the person of the Testator, hath an intire authority; Howbeit the Law is otherwise of other Jointenants. Executors intirely possest.

Dyer 157. Pl.28.4,5. P. M.

13 A. by Indenture inrolled demiseth the Manor of D. to B. and his Heires in fee farm rendring Rent with clause of distresse, and upon non Rent not extinct by a Fine.

non-payment a re-entry, & by the same Indenture Covenants to make such assurance, &c. according to the true intent, purport and meaning expressed in the same Indenture, and by another Indenture bearing date the same day, A. covenants to levie a Fine of the said Manor, &c. before such a feast, &c. which Fine should be to the onely use, intents, essects, and conditions expressed in the former Indenture, and to none other, and livery of Seisin was made upon the same Indenture accordingly, and after the Fine was also levied, viz. come ceo que B. habuit ex dono A. with release and warranty according to the course of Fines, &c. In this case the Rent was not extinct or touched by the Fine; because the Fine has relation to the former Indenture.

Challenge. 14 If a Lord be but a Lessor to the Lord of the Plaintiff or Defendant, this is a principal Challenge, in respect of that relation betwixt them, which may procure favour. Dyer 176. 27. 2 Eliz.

Covenant. 15 A Feme hath the third part of the Land of a Tenant delivered unto her by the Sheriffs in Dower, the Tenant gives, grants, and assignes all the Land comprised in his Lease to A. and covenants, that he had not done any act, but that the Assignee may enjoy it against every one, and he was also bound by Obligation to perform the Covenants; In this case, the Obligation is not forfeited for the words, but that have Relation to the words of the Lease, viz. that he hath not done any Act, and are not absolute words, as if the Assignee should enjoy it against all men. Dyer 240. 43. 7 Eliz.

53 *Verba posteriora propter certitudinem addita, ad priora, quæ certitudine indigent, sunt referenda.*

Reference of words. 1 Sir Adam de Clydrow knight, brings a præcipe quod reddat against John de Clydrow, and the Writ was; quòd juste, & c. reddat manerium de Wicombe, & duas crucat terræ cum pertinentiis in Clydrow; In this case, the Town of Clydrow shall not relate to the Manor quia non indiget; for the Manor may be demanded without making mention, that it lyeth within any Town, but cum pertinentiis, although it cometh after the Town, yet doth it relate to the Manor, quia indiget, &c. Vide 3 E. 4. 10. 6 E. 3. 12. Co. l. 8. 119. a 1. in Dr. Bonhams case.

The like. 2 If a man grant Rent in manerio de præcipiend. in C. Acres of Land parcel of the same Manor with clause of distresse in the C. Acres; In this case the Rent shall onely issue out of the C. Acres; and the general words shall be construed according to the special words, according to the Rule in Margery Mortimers case, 7 E. 3. fol. 10. a. Quando carta continet generalem clausulam, posteáque descendit ad verba specialia, quæ clausulæ generali sunt consentanea; interpretanda est carta secundum verba specialia. Co. l. 8. 154. b. 2. Sir Edw. Althams case.

Note. 3 If a man grant Rent and go no farther, these words shall create an estate for life; but if the habendum be for years, that shall qualifie the general words. Co. ibid.

Fail. 4 If a man give Lands to one and his Heires, habendum to him and the Heires of his body, he shall have but an Estate-tail, and no Fee expectant; for the habendum qualifies the general words Precedent. Co. ibid.

Release of Dower 5 A Feme hath title of Dower in Lands in Wethersfield, & Gosfield, and releaseth to the Reversioner omnes actiones, &c. sectas querelas, & Demand. quæcunque nec non totam dotem suam, ac titulum, ac actionem dotis sibi contingent, &c. de aliquibus terris in Wethersfield, &c. this is onely a Release of her Dower in Wethersfield, and not in Gosfield. Co. l. 8. 154. a. 4. Sir Ed. Aw. Althams case.

Speaking in Waste. 6 If a man demise Land for life absque impetitione vasti, the Lessee may cut down the Timber-trees, and convert them to his own use; but if it be absque impetitione vasti per aliquod breve de vasto; In that case, the Action onely shall be discharged, and not the property in the Trees, so that the Lessor, after they are felled, may seise them, &c. Co. l. 11. 82. b. 3. Lewis Bowles case.

7 No

Co.l.3.83.a.4 *Twines* caſe.

7 No purchaſer ſhall avoid a precedent conveyance made by fraud and covin, but he that is a purchaſer for money or other valuable conſideration; For albeit in the preamble of the Statute of 13 El. 5. it is ſaid, For money or other good conſideration, and likewiſe in the booke of the Act, For money or other good conſideration; Yet theſe words, good conſideration, are to be underſtood onely of valuable conſideration, and this appears well by the clauſe, which concerns them, that have power of revocation; for there it is ſaid, For money or other good conſideration paid or given, and this word, paid, is to be referred to money, and given, is to be referred to good conſideration, ſo the ſenſe is, For money paid, or other good conſideration given, which words exclude all conſiderations, of nature, blood, or the like, and are to be underſtood of valuable conſideration, which may be given; and therefore he that makes the purchaſe of the land for valuable conſideration, is the onely purchaſer within that Statute: And this laſt clauſe doth well expound theſe words, other good conſideration, mentioned before in the preamble and booke of that Act. What is a good conſideration within the Statute 13 *Eliz.* 5.

54 No man can deem an act to himſelf.

Co. Inſt. pars 1.38.b.4. & 39 a. 4.

1 A Feme Gaurdian in Socage ſhall not expow her ſelfe De la plus beale, without judgement; but after judgement ſhe may (as Littleton ſaith, §. 49.) for then it is the act of the Law, and not ſimply hers. Feme, Dower

Co. ib. 48.b.1.

2 If A. by Deed give lands to B. to have and to hold after the death of A. to B. and his heirs, this is a void deed, becauſe he cannot reſerve to himſelfe a particular eſtate, and conſtruction muſt be made upon the whole deed. Grant in future void.

Littl. §. 168. Co. ib. 112.a.

3 A man cannot make any grant of lands, &c. to his wife during the Coverture, becauſe they are but one perſon in Law, and a man cannot do an act to himſelfe, &c. Baron cannot grant to his wife.

Littl. §. 212. Co.ib.141.a.

4 A man cannot be judge in his owne cauſe; and therefore if a man will preſcribe, that if any Cattle be Damage feſant upon the Demeſnes of his Manor, he may detaine them, until he be ſatisfied for the damage at his own will and pleaſure: this cuſtome is repugnant to reaſon, and ought not to be allowed by the Judges: For, Malus uſus abolendus eſt, quia in conſuetudinibus non diuturnitas temporis, ſed ſoliditas rationis eſt conſideranda. No diſtreſſe is repleviable.

Co.ib.141.a.2. *Finch* 19.

5 A fine levied before the Bailiffs of Salop, was reverſed, becauſe one of the Bailiffs was party to the fine, Quia nemo debet eſſe judex in propria cauſa; Nemo poteſt eſſe judex, &c. Hillar. 4. H. 4. Coram Rege, Salop. A Fine void.

Littl. §. 479, 480. Co. ib. 280. a. 1. and 307.a.4. Littl. §. 543, 544.

6 If there be Lord and Tenant, and the Lord releaſeth to the Tenant his Seigniory, this muſt of neceſſity enure by way of extinguiſhment: For, the Tenant cannot have ſervice to be taken of himſelfe, neither yet can one and the ſame man be both Lord and Tenant: So alſo if a Rent-charge be granted out of land, and the Grantee releaſeth or granteth the rent to the Terre-tenant; in this caſe, the rent is extinct; for a man cannot have land, and alſo rent iſſuing out of the ſame land, neither yet can he pay the rent to himſelfe: There is the ſame reaſon of Common of Paſture releaſed to the Tenant of the land; for that alſo worke an extinguiſhment; becauſe a man cannot have Land, and a Common of Paſture iſſuing out of the ſame land, &c. Extinguiſhment of rent, &c.

Co.ib. 280.a.3.

7 If there be Lord and Tenant by Fealty and Rent, the Lord granteth the Seigniory for yeares, and the Tenant attorneth, the Lord releaſeth his Seigniory to the Tenant for years, and to the Tenant of the land generally; the whole Seigniory is extinct, and the eſtate of the Leſſee alſo: but if the releaſe had been to them and their heirs, then the Leſſee Increaſing, & extinguiſhment.

Leſſee had had the inheritance of the one moity, and the other moity had been extinct: And the reaſon of this diverſity is, becauſe when the releaſe is made generally, it cannot enure to the Leſſee longer than for life, becauſe it enureth by way of enlargement, and being made to the Tenant of the land, it enureth by way of Extinguiſhment, becauſe he cannot do ſervice to himſelfe, and then there cannot remaine in the Seigniory a particular eſtate for life: But when the releaſe is made to them and their heirs, each one takes a moity, the one by way of encreaſing of the eſtate, and the other by extinguiſhment.

Acceptance. Attornment. 8 If there be Lord and Tenant, and the Tenant lets the Tenements to a Feme for term of her life, the remainder over in fee, the Feme takes Baron, and after the Lord grants the ſervices, &c. to the Baron and his heirs; In this caſe there can be no attornment by parol, &c. becauſe the Baron that ought to attorn, cannot attorn to himſelfe, but his acceptance of the grant of the Seigniory amounts to an Attornment in Law. Littl. §. 558. Co. ib. 312. b.

The like. 9 If the Lord grant his Seigniory to the Tenant of the land and to a ſtranger, the Tenant cannot properly and formally attorn to himſelf; but his acceptance of the grant is a good attornment in Law to extinguiſh the one moity, and to veſt the other moity in the ſtranger. Co. ib. 313. a. 1.

Acceptance. Attornment. 10 If there be Lord and Tenant, and the Tenant take Feme, and after the Lord grant the ſervices to the Feme and her heirs; Here can be no formal attornment, becauſe the Baron cannot attorn to himſelfe and his wife in his wives right; yet his acceptance of the deed is a good attornment in Law to veſt the ſervices in the Feme and her heirs; but during the coverture they are ſuſpended, &c. Littl. §. 559. Co. Inſt. pars 1. 313. a.

Grant of the Seigniory reverſant for life of the tenant. 11 If there be Lord and Tenant, and the Tenant make a leaſe to a man for terme of his life, ſaving the reverſion to himſelfe; Here, if the Lord grant the Seigniory to the Tenant for life in fee, albeit as to all things concerning the right, the Seigniory hath his being (as if the Tenant die without heire, the tenancy ſhall eſcheat to the Grantée, &c.) yet as to the poſſeſſion during the particular eſtate, the Grantée ſhall take no benefit of the Seigniory; and therefore during that time he ſhall have no Rent, Service, Wardſhip, Reliefe, Heriot, or the like; becauſe theſe duties belong to the poſſeſſion, and he cannot do or pay them to himſelfe. Littl. § 562. Co. ib. 314. a. 1

Remitter. 12 The principal cauſe, why a Tenant in taile in many caſes is remitted, is becauſe (as Littleton ſaith) there is no perſon, againſt whom he may ſue his Writ of Formedon; for none is Tenant of the Frankteneument but himſelf, and againſt himſelf he cannot ſue, &c. There is the ſame reaſon alſo of other Remitters. Finch 19. Co. l. 3 3. a. 3. in the Marq. of Wincheſters caſe. Littl. Sect. 661. Co. ib. 349. a. 4. Littl. 665. Littl. 680, 682, 683, 684, &c.

Voucher aſſignee. 13 If a man make a feoffment in fee to A. his heirs and Aſſignes, A. enfeoffeth B. in fée, who re-enfeoffeth A. he or his Aſſignes ſhall never vouch; becauſe he cannot be his own Aſſignée; but if B. had enfeoffed the heire of A. he might vouch as Aſſignée; for the heire of A. may be Aſſignée to A. inaſmuch as he claimeth not as heire. Co. ib. 385. b. 2.

Warranty. 14 If Tenant in taile make feoffment to his Uncle, and after the Uncle make a feoffment in fée with warranty, &c. & take again an eſtate to him in fee, and then enfeoff a ſtranger without warranty, and die without iſſue, and the Tenant in taile die; Here the iſſue in taile ſhall not be barred by the warranty made to the firſt Feoffee; becauſe that warranty by the Uncles reſuming an eſtate in fee of the land, is utterly defeated; For if the warranty ſhould have ſtood in force, then ſhould the Uncle have warranted it to himſelfe, which could not be, &c. Co. ib. 389. b. 3. & 390. a. 1. Littl. Sect. 743.

Sheriffe act by himſelfe and bid. 15 A man cannot preſent himſelfe to a Benefice, make himſelfe an Officer, ſue himſelfe, or ſummon himſelfe; and therefore if a Sheriffe ſuffer *Finch* 19. 8 H. 6. 29. 3 El. Dyer 188

ſuffer a common recovery, it is Error, becauſe he cannot ſummon himſelfe.

Finch 19. 16 A man cannot be Judge and party in a Suit; And therefore if a Juſtice of the Common Place be made a Juſtice of the Kings Bench (though it be but hac vice) it determineth his Patent for the Common Place; for if he ſhould be Judge of both Benches together, he ſhould control his owne judgments; becauſe if the Common Pleas erre, that error ſhall be reformed in the Kings Bench. No Judge of two Benches at once.

Co. l. 1. 174. a. 3. *Diggs* caſe. 17 If a man by Indenture covenant to ſtand ſeiſed to the uſe of himſelfe for life, the remainder to others in tail, &c. and alſo reſerve unto himſelfe power of revocation, and doth revoke the uſes accordingly, immediately upon ſuch revocation the uſes ſo limited are determined without entry or claim; becauſe he himſelfe was Tenant for life of the land, and he cannot enter or make claim upon or againſt himſelfe, &c. And therefore it is agreed in the 20 E. 4. 18, & 19. that if a Feoffment be made upon collateral condition, and before condition performed, the Feoffee demiſeth the land to the Feoffor, if after the Feoffor perform the condition, the land ſhall be immediately in the Feoffor without entry or claim; becauſe he himſelfe is already in poſſeſſion thereof: So likewiſe if a Villain purchaſeth rent iſſuing out of the Lords land, that rent ſhall be in the Lord without entry or claime, cauſa qua ſuprà. The Feoffor in without entry or claim.

Co. l. 2. 51. b. 4. Sir *Hugh Cholmleys* caſe. 18 It is holden in 7 E. 3. that if the Advowſon of the Church of Dale be granted to the Parſon of Dale, and to his Succeſſors, this is void as to the Succeſſor; becauſe the Succeſſor can never take any benefit thereof by way of preſentation; for he cannot preſent himſelf, &c. None can preſent himſelf.

Co. l. 4. 55. a. 1. The Sadlers caſe. 19 In all caſes at the Common Law, when the King was ſeiſed of any eſtate of Inheritance or Frankfreement by any matter of record, he that right had could not by the Common Law have any travers, or real action, upon which he might have an Amoveas manum; for that the King by his Writ could not command himſelfe; but he was put to his Petition of right (in the nature of his real action) to be reſtored to his Frankfreement and Inheritance, 4 H. 6. 12. 24 E. 3. 23. 1 H. 7. 3. 4 E. 4. 21. 9 E. 4. 52. No traverſe or action againſt the King.

Co l. 8. 68. b. 3. *John Trollops* caſe. 20 If a Biſhop himſelfe be ſued, and he pleads in diſability of the party, Plaintiff, excommunicement by himſelf or his Commiſſary (who is as his Deputy) albeit it be for another cauſe than that in queſtion, yet that ſhall not diſable the Plaintiff; becauſe in this caſe the Biſhop himſelfe is party; and with this agrées 16 E. 3. Excom. 5. 5 E. 2. Excom. 27. 5 E. 3. 8. 8 E. 3. 69. 18 E. 3. 58. 9 H. 7. 21. b. 10 H. 7. 9. Biſhop, Excommunication.

Co. l. 8. 118. a. 1. Doctor *Bonhams* caſe. 21 The Preſident and five elect of the College of Phyſitians in London, ought not to be Judges to give Sentence or Judgement, Miniſters to make ſummons, and parties to have the moity of the forfeiture; albeit they have an Act of Parliament to protect them, viz. 14 H. 8. cap. 5. For, Nemo debet eſſe judex in propria cauſa; imò iniquum eſt aliquem ſuæ rei eſſe judicem. Judge and party.

Co. ib. 118. b. 3. 22 If an Act of Parliament grant to any to hold or have Conuſance of all manner of Pleas ariſing before him within his Manor of Dale, yet he ſhall hold no plea, wherein himſelfe is party; For Iniquum eſt, &c. The like.

Co. 9. 123. b. 4. *Anthony Lowes* caſe. 23 The Duchie of Lancaſter, before it was united to the Crown, was holden of the King in Capite; but when they remained in one and the ſame perſon, the ancient tenures of the Crown did ſleep perpetuo ſomno, becauſe the King could not hold of himſelf. Duchy of Lancaſter.

F. N. B. 21. i. 24 In the Common Pleas, upon Error in Proceſſe, or in default of the Clerks, the Juſtices there may reverſe their owne judgement (ſo it be done the ſame terme) without ſuing any Writ of Error: And if it be deferred till another terme, yet may it be reverſed by the ſaid Judges upon Errour in fact not reverſable in the ſame Court.

upon a Writ of Error: But if it be Error in Law (which is the default of the Justices themselves) that Court cannot reverse such a judgment, no not by a Writ of Error; For, that Error is to be reversed in another Court before other Justices by Writ of Error, because the Justices of the Common Pleas are not competent Judges of their owne error.

Conspiracy. 25 A writ of Conspiracy cannot properly lye against one single person; because one person cannot be said to conspire with himself. F.N.B. 116. l.

None can be prisoner to himself. 26 If the Warden of the Fleet, who hath his office in fee, die seised, his Son and Heire being then in prison, and the office descends unto him being so in prison; In this case, the Law will adjudge him out of prison, albeit the Fetters be upon his legs; for that he cannot keep himself in prison, and therefore shall be adjudged at large. Pl. Co. 37. a. 3. The Sheriffs of *London's* case.

No donor to himself, Stat. 27 H. 8. 27 If A. seised of lands in fee before the Statute of uses (made Anno 27 H. 8.) had granted the same lands to Feoffees in trust to the use of himself and his wife in tail, and afterwards the Statute is made; Here, by force of that Statute, the possession being conveyed to the use the Feoffors are Donors, and not A. For it seemeth improper and repugnant, that A. should be Donor to himself. Pl. Co. 59. a. 4. *Wimbish* and *Talbois* case.

Feoffees of lands charged with a recognisance. 28 If the Conisor of a Recognizance (according to the Statute of 23 H. 8. cap. 6.) enfeoff the Conisee of parcel of the land, and a stranger of another parcel, and reserve parcel in his own hands; Here, the Conisee shall not have execution against the stranger: For if one Feoffee of the Conisor (where his land onely is put in execution) may have an Audita querela, against all the other Feoffees, to make their lands also to be put in execution, and to be contributary to the intire charge; By the same reason, if the Conisee himself be one of the Feoffees, the lands in the hands of the other Feoffees shall not be chargeable with the execution; for that the Conisee himself cannot be contributary with them (for his part) towards the satisfying of the charge; because he cannot contribute to himself, neither can he be contributary for a personal thing due to himself; Neither yet shall the Charge be apportioned, but all shall be extinct as against the other Feoffees: Howbeit against the Conisor himself, the Conisee shall have execution for the parcel still remaining in his hand, &c. Pl. Co. 72. b. 3. *Rosse Vens* Sir *Tho. Pope*, in *Audita querela*. F.N.B. 104, n. & 105. c. Vide Dyer 193. 30. 2, 3 Eliz.

Lands to be sold by Executors. 29 At the Common Law, if lands had been willed to be sold by Executors, or had been devised to Executors to be sold, if any of them had refused, the rest could not have sold them: but now that is holpen by the Statute of 21 H. 8. cap. 4. viz. the first by the expresse words of that Statute, and the other by the equity of the same: Howbeit in neither of those cases, when the one refuseth, can the other make sale to him, that so refuseth; because he is party and privy to the last will, and remaineth Executor still. Co. Inst. pars 1. 113. a. 3.

The younger brother chargeth the land of the elder. 30 The younger brother disseiseth the elder, who is barred in an Assise by a false oath, the younger chargeth the land, and dies without issue, and the land descends to the elder brother; In this case, the elder brother is without remedy, because there is none (but himself) against whom he may bring the attaint, and therefore he shall still hold the land charged. Dyer 5. 1. 25 H. 8.

Tythes. 31 If ỳ Parson of a Church purchase a Manor within his Parish; Here, by this purchase and unity of possession, the Manor, which was tytheable before, is now made non decimabilis, because he cannot pay tythes to himself. Dyer 43. 21. 30 H. 8.

Witnesse. 32 It was resolved in the Common Bench, Pasch. 10 Jac. that a wife cannot be produced as a witnesse, either against or for her husband, because they are one person in Law, Duæ animæ in carne una, and he cannot be a witnesse to or for himself in his own cause. Co. Inst. pars 1 6. b. 4.

Dyer 220. 14. 5 Eliz. 33 A recognizance was acknowledged to Sir Nicholas Bacon and two others before Sir Nicholas himſelf, being then Lord Keeper, and it was adjudged void as to him, and good for the others. Recogniſance.

Dyer 279. 10, 11 Eliz. 34 The Citizens of Yorke were incorporate by R. 2. by the name of Maior, Sheriffs, and Citizens, and claim to be ſo before by preſcription, and to have a cuſtom to ſeiſe goods foraign bought, & foraign ſold; Now in a ſuit againſt them for ſeiſing ſuch goods, the Venire facias iſſued to the Sheriffe of the County, De vicinetu Caſtri Eborum, becauſe it was next adjacent to the Citie; for it was not thought fit to direct it to the Sheriffs or Coroners of Yorke, becauſe they were Citizens and parties. Yorke Citie.

Dyer 304. 54. 14 Eliz. 35 The next avoydance is granted to three, Habendum iis & unicorum conjunctim & diviſim, the firſt preſents the third, who is admitted, inſtituted, and inducted, and adjudged good; Howbeit, if the Biſhop had refuſed to admit him alone, his Quare Impedit, peradventure would have failed, he having a joynt Intereſt in the avoydance, and the Habendum being void in Law, as it ſeems. Quare Impedit.

Hob. 10. *Fryer* and *Gildridg.* 36 The Obligée made the wife of one of the Obligors his Executrix, and died, the woman Executrix adminiſtred, then her husband being one of the Obligors, made her his Executrix, and died, leaving aſſets to pay the debt, then ſhe died, and a ſtranger took adminiſtration of the goods of the Obligée unadminiſtred, and brought his action againſt the ſurviving Obligor; but it was adjudged per Curiam, that the action would not lie, becauſe when one of the Obligors made the Executrix of the Obligée his Executrix, and left aſſets, ſhe could not ſue her ſelfe, but the debt was preſently ſatisfied by way of retainer, and (conſequently) no new action could be had for that debt. Vide ſuprà, 46. 4. Debt extinct.

Hob. 85. *Day* and *Savage.* 37 Triall of the Cuſtomes of London ſhall not be by Certificate from the Maior and Aldermen of that Citie (albeit it be by their Recorder) to the ſuperiour Courts of Juſtice, becauſe they cannot be Judges and parties, when their Cuſtomes come in queſtion. Cuſtomes of *London.*

55 The Law favoureth privity. *Vide Max.* 47. 16.

Co. Inſt. pars 1 28. a. 2. 1 Tenant in tail after poſſibility of iſſue extinct hath divers privileges annexed to his eſtate, whych a bare Tenant for life hath not (for which ſee Co. Inſt. pars 1. 27. b.) nevertheleſſe if he grant over his eſtate to another, his Grantee ſhall not have them; for he hath thoſe privileges in reſpect of the privity of his eſtate, and of the inheritance that was once in him: And therefore it was adjudged in the caſe of one Evens, Mich. 28, & 29 Eliz. that where Tenant in tail after poſſibility of iſſue extinct granted over his eſtate to another, that the Grantée was compelled to attorn in a Quid juris clamat, as a bare Tenant for life, and is ſo to be named in the writ; For by the aſſignment the privity of the eſtate being altered, the privilege was gone; and this judgement was affirmed in a writ of Error: And herewith alſo agreeth 27 H. 6. Aid, Statham, 29 E. 3. 1. b. Co. l. 11. fol. 83. b. Bowles caſe. Vide infrà 116. Tenant in tail after poſſibility. *Quid juris clamat.*

Co. ib. 35. a. 1. 2 If the husband make ſeveral feoffments of ſeveral parcels, and dyeth: and one of the Feoffées aſſign dower to the wife of a parcel of land in ſatisfaction of all the Dower, which ſhe ought to have in the lands of the other Feoffées; In this caſe the other Feoffées ſhall take no benefit of that aſſignment; becauſe they are ſtrangers thereunto, and cannot plead the ſame: But in the ſame caſe, if the husband died ſeiſed of other lands in Fee-ſimple, and the ſame deſcended to the heire, and the heire endoweth the wife of certain of thoſe lands in full ſatisfaction of all the dower that ſhe ought to have, as well in the lands of the Feoffées, as in his own lands, this aſſignment is good, and the ſeveral Feoffées Aſſignment of Dower by the Feoffee, & by the heire.

Feoffées ſhall take advantage of it : And therefore if the wife bring a Writ of Dower againſt any of them, they may vouch the heire, and he may plead the aſſignment which he himſelf hath made in ſafety of himſelf, leſt they ſhould recover in value againſt him; So as there is a privity in this reſpect between the Heire and the Feoffées, and by this means the aſſignment may be pleaded by the heire that made it.

Livery to the Leſſee for years.

3 If a man let lands for years, the remainder over to another in fee, Albeit livery be not neceſſary for the Leſſee for years, yet becauſe the immediate poſſeſſion belongeth to him, he muſt of neceſſity take the livery; otherwiſe no eſtate can paſſe to him in remainder: And livery being accordingly made unto him, it ſhall convey the eſtate to him in remainder, by reaſon of the privity of thoſe eſtates; For, the particular eſtate and the remainders, which depends upon it (though there be never ſo many) do all make in Law but one eſtate; and therefore livery to the Leſſee for yeares ſhall enure to him in remainder, &c. Co. ib. 49.a.4. & 143. a. 2.

Waſte.

4 The advantage of bringing an action of Waſte conſiſts in privity; for if after the Waſte done, the Reverſioner granteth away his eſtate, albeit he afterwards taketh back the whole eſtate again, yet as the Waſte diſpuniſhable; So likewiſe if he grant the reverſion to the uſe of himſelf and his wife, and of his heirs, yet the Waſte is diſpuniſhable, &c. becauſe the eſtate of the reverſion (wherein the privity is to that purpoſe conſiſted) continueth not, but is altered, &c. If an eſtate taile determines, hanging the action of Waſte, ſo that the Plaintiff becomes Tenant in taile after poſſibility, &c. the action of Waſte is gone. If the Tenant doth Waſte, and he in the reverſion dieth, the heire ſhall not have an action of Waſte for the Waſte done in the life of the Anceſtor; nor a Biſhop, Maſter of an Hoſpital, Parſon, or the like, for Waſte done in the time of the Predeceſſor: And ſo if Leſſee for years doth Waſte and dieth, an action of Waſte lyeth not againſt the Executor or Adminiſtrator, for Waſte done before their time: But if there be two Coparceners of a reverſion, and Waſte is committed, and the one of them die, the Aunt and the Niece ſhall joyn in an action of Waſte, &c. Vide Inſt. 116. Co. ib. 53.b.3, 4.

Homage.

5 If there be two Coparceners or Joyntenants of a Seigniory, if the Tenant doth Homage and Fealty to one of them, he ſhall be excuſed againſt the other; and this is by reaſon of the privity and intrenſeſſe of their eſtate. Co. ib. 67.b.2.

Homage extinct.

6 In homage Anceſtrel, continuance of blood on the Lords ſide is not always neceſſary; for an Abbot, Prior, Biſhop, or the like, may be Lord by Homage Anceſtrel; but yet there ought to be privity of ſucceſſion time out of minde in one and the ſame politique body; for if that body be once diſſolved, though a new one be founded of the ſame name, and all the poſſeſſions be granted to them, yet the Homage Anceſtrel is gone; Howbeit if a Prior and Covent be tranſlated (Concurrentibus his, quæ in jure requiruntur) to an Abbot and Covent, or to Deane and Chapter; In that caſe, becauſe the privity is preſerved, the Homage Anceſtrel doth alſo remain; for albet the name be changed, yet the body was never diſſolved, but in effect remaineth ſtill, &c. Co. ib. 103.a.3.

Homage extinct upon alienation.

7 If the Tenant that holds by Homage Anceſtrel, aliens his land to another, the Alienee ſhall not hold of the Lord by Homage Anceſtrel, becauſe the privity of the eſtate is altered, and the continuance of it in the blood of the Tenant is diſſolved: And if the Tenant take againe an eſtate in fee of the land from the Alienee, he then holdeth by Homage, but he ſhall not hold by Homage Anceſtrel, cauſa qua ſuprà: So it is alſo if the Tenant make a feoffment in fee upon condition, and dieth, his heire performeth the condition, and re-entreth; Here, the Homage Anceſtrel is deſtroyed in reſpect of the interruption of the continuance of the Co. ib. 103.a.3. Litt. Sect. 147.

privity

privity and eſtate, as it was agreed in a Caſe between the Lord Cromwel, and one Andrews, Mich. 14, & 15 Eliz. But if the Tenant maketh a leaſe for life, or a gift in tail, this is a continuance of the privity and eſtate in the Tenant, in reſpect of the reverſion that remaineth in him; becauſe in that caſe the fée was never out of him, &c. Co.l.8.75.b.3. The Lord Staffords caſe.

Co.ib.103.b.2. 8 If the Tenant by Homage Anceſtrel alien his land, and the Alienée is impleaded, and vouch the Alienor, albeit he cometh in (by ſtation of Law) to many purpoſes in privity of his former eſtate; yet to this purpoſe he cannot come in, as Tenant by Homage Anceſtrel, becauſe of the diſcontinuance of the eſtate and privity, for that the tenancy was not continued in the bloud of the Tenant: And therefore Britton ſaith, Et come aſcun ſoit vouche per homage & le Seignior tende à averrer que le tenement dount il eſt vouche, fuit tranſlate hors del ſanké del primer purchaſſour per feoffment, ou per aſcune autre tranſlation; en tiel cas, ſoit le tenant charge de voucher ſon feoffor, ou ſes heires, &c. Britt. 170.a. Howbeit if the land were recovered againſt the Tenant upon a faint title, and the Tenant recover the ſame again in an action of an higher nature; Yete the Homage Anceſtrel remains; becauſe in that caſe, the right was a ſufficient mean to preſerve the privity and continuance: So it is alſo if he had reverſed it in a Writ of Errour. The like.

Co.ib.103.a.4. 9 If Ceſtuy que uſe after the Statute of 1 R. 3. 1. and before the Statute of Uſes, (27 H. 8. 10.) had made a feoffment in fée, upon condition, and entred for the condition broken, he ſhould have detained the land againſt the Feoffées for ever; for that the eſtate and privity was for the time taken out of the Feoffées, and thereby diſſolved for ever. Ceſtuy que uſe.

Co.ib.117.a.2. 10 The Lord ſhall not take advantage of any obligation, covenant, or other thing in action made to the Villein, becauſe they lie in privity, and cannot be transferred to others: Neither ſhall the Lord have a thing in action by Eſcheat; for the ſame reaſon, Co. l. 10. 48. a. 3. Lampets caſe: Co. ibid. Neither yet ſhall the Lord by voucher or otherwiſe take advantage of a warranty made to a Villein his heirs and aſſigns, becauſe it is in view of an action, and conſiſts in privity, &c. Things in action.

Co: Inſt. pars 1.130.b.1. 11 Albeit the Vouchee, Tenant by reſceit, Prayée in aide, or Garniſhée be no Parties to the Writ, yet before they appear, a Protection may be caſt for them; becauſe when the Demandant grants the Voucher or reſceit in judgement of Law, they are made privie; And although the Demandant counterplead the Voucher or reſceit, yet if it be adjudged for them, and ſo they made privy in Law, a Protection may be caſt for them, as aforeſaid: And ſo it is of the Garniſhée, a Protection may be caſt for him at the day of the return of the Scire facias, &c. A protection caſt for vouchee, &c.

Co.ib. 146.a. 1. 12 If a Rent-charge be granted to A. and B. and their Heires, A. diſtraineth the beaſts of the Grantor, & he ſueth a Replevin, A. avoweth for himſelf, and maketh conuſance for B. A. dieth and B. ſurviveth; In this caſe, B. ſhall not afterwards have a Writ of annuity; becauſe the election and Avowry for the rent by A. barreth B. of any election to make it an annuity, albeit he aſſented not to the Avowry, and this is by reaſon of the privity of their eſtate, &c. Joynetenants in Avowry.

Co. ib. 170.b. 1. 13 Husband and Wife Tenants in ſpecial Tail have iſſue a daughter, the Wife dieth, the Husband by a ſecond Wife hath iſſue another daughter, both the daughters enter (where the eldeſt is onely inheritable) and make partition; here, the eldeſt daughter is concluded during her life to impeach the partition; or to ſay that the youngeſt is not Heir, and yet the youngeſt is a ſtranger to the Tail; but in reſpect of privity of their perſons, the partition ſhall conclude; for a petition between meer ſtrangers in that caſe is void: Howbeit the iſſue of the eldeſt ſhall avoid this partition, as iſſue in Tail. Coparceners.

like. 14 I. S. ſeiſed of Lands in Fee hath iſſue two daughters, viz. Roſe baſtard eigne, and Anne mulier puiſne and dieth, Roſe and Anne do enter, and make partition; In this caſe, Anne and her heirs are concluded for ever; and this is by force of the Privity, that is betwixt them. Co.lib.170.b.2.

mpt. 15 An action of Accompt muſt be grounded upon Privity; for without Privity no Action of Accompt can be maintained, viz. either a Privity imeed by the conſent of the party as in ſuch an action againſt a Receiver, or Bailife (for againſt a Diſſeiſor or other wrongdoer no account doth lie) or a privity in Law (ex proviſione legis) made by Law, as againſt a Guardian in ſoccage, &c. Co. lib. 171.2. 4.

ination of roperty in parcenary. 16 In coparcenarie, if one of the parts be evicted by an eigne title, the that ſo loſeth her part ſhall enter upon the reſt to have recompence, &c. becauſe yet the Privity, which the Law creates betwixt them, doth ſtill remain, but if one of the parceners ſell her part, and then the part, which the other parcener hath, is evicted, &c. In that caſe, the parcener, that ſo loſeth her part, ſhall not enter upon the Alienee; for that by the alienation the privity is diſſolved: And therefore if a man hath land in taile, and alſo as much in Fee-ſimple, and hath iſſue two Daughters, and die, and the Daughters make partition, ſo that the entailed land is allotted to the eldeſt, and the Fee-ſimple land to the youngeſt; Here, if the youngeſt Daughter alien the Fee-ſimple land to another in fee, and hath iſſue, and die, the iſſue may well enter into the entailed land, and ſhall hold it in property with her Aunt; Yet ſhall not the eldeſt after enter into half of the lands in Fee-ſimple upon the Alienee; becauſe by the alienation the privity of the eſtate was deſtroyed, &c. So it is alſo, if the youngeſt Daughter had made a gift in taile; becauſe the reverſion expectant upon an eſtate taile is of no account in Law; for that it may be cut off by the Tenant in taile at his pleaſure; It is otherwiſe of an eſtate for life, or years, &c. And what is ſaid of parcenary, is alſo true of exchange in point of eviction, &c. Co.lib.173.b. Littl.Sect.262. Littl. §. 260, Co. ib.172.b. 4.

Exchange.

Coparceners. 17 If a man is ſeiſed of a Carve of land by juſt title, and diſſeiſeth an Infant within age of another Carve, and hath iſſue two daughters, and dies, and the Carve by good title is allotted to the eldeſt, and the other to the youngeſt, who alieneth it to another in fee, and after the Infant at full age enters upon the Alienee; In this caſe, the youngeſt daughter hath excluded her ſelf from having any part of the Carve by good title; for that by her alienation the privity was deſtroyed: Howbeit if the youngeſt daughter before the entry of the Infant had onely granted it for years, or life, or in taile, ſaving the reverſion, there peradventure it were otherwiſe; becauſe in that caſe the privity is not utterly deſtroyed, ſhe having reſerved to her ſelf the reverſion and fee. Littl. §. 262. Co.ib. 173. b.

vition in parcenary. 18 In coparcenary, if the whole eſtate in part of the purparty be evicted, that ſhall avoid the partition in the whole, be it of a Manor, which is intire, or of acres of ground, or the like, that be ſeveral; for in that caſe the privity remains, and the partition implyeth (for this purpoſe) both a warranty and a condition in Law, and either of them is intire, and therefore doth give in this caſe an entry into the whole: And ſo hath it been reſolved (in Baſtards caſe, Co. l. 4. fol. 121.) both in the caſe of partition, as alſo of an exchange. There is likewiſe the ſame reaſon, when any eſtate of Free-hold is evicted from the Coparcener in all or part of her property; for then it ſhall be alſo avoyded in the whole: As if A. be ſeiſed in fee of one acre of land in poſſeſſion, and of the reverſion of another expectant upon an eſtate for life, and he diſſeiſe the Leſſee for life, who makes continual claim; A. dieth ſeiſed of both acres, having two daughters, partition is made, ſo as the one acre is allotted to the one, and the other acre to the other, the Leſſee enters, the partition is avoyded for the whole, and ſo likewiſe was it reſolved in the caſe aboveſaid. Vide infrà 100. Co.ib.173.b. 4.

19 If

Co. lib. 186. b. 2.

19 If there be two Joyntenants of an Advowſon, and the one preſenteth to the Church, and his Clerk is admitted and inſtituted, this in reſpect of the privity ſhall not put the other out of poſſeſſion; but if that Joyntenant that preſented, dieth, it ſhall ſerve for a title in a Quare Impedit brought by the Survivor. Joyntenants of an advowſon.

Litt. Sect. 304. Co. lib. 193. b. 1.

20 If there be three Joyntenants, and one of them releaſeth to another of his companions all his right in the land without the word Heires, this ſhall enure to that companion and his heires, to hold that part in common with the other Joyntenant; and this is by reaſon of the privity of their eſtate, and for that he, to whom the releaſe is made, is ſeiſed per my & per tout, of the fee and inheritance. Joyntenants. Releaſe.

Co. lib. 193. b. 2.

21 If there be two Coparceners, and the one hath iſſue twenty daughters, and dieth, the other may releaſe to any one of the daughters her whole part: And here, albeit ſhe, to whom the releaſe is made, hath not an equal part; Nevertheleſſe, by reaſon of the privity and the intirenelle of the eſtate the releaſe is good, although it be made without the word Heires: But if there be two Joyntenants of twenty acres, and the one maketh a feoffment of his part in eighteen acres, the other cannot releaſe his intire part, but onely in two acres, becauſe the Joyntenant is ſevered for the reſidue. Coparcenen. Releaſe. Joyntenants releaſe.

Litt. Sect. 334. Co. ibid. 205. b. 4. & 209. a. 1.

22 If a feoffment be made in Mortgage upon condition, that the Feoffor ſhall pay ſuch a ſumme at ſuch a day; albeit the Feoffor die before the day of payment, yet may the heire redeem the Mortgage by the payment or tender of the money; So alſo may the Executor or Adminiſtrator, or (in their default) the Ordinary; although there be no mention in the deed of payment by any of them: And all this by reaſon of the privity betwixt the Anceſtor and heir which is, and the Teſtator and Executor, and the Inteſtate and Adminiſtrator, or Ordinary; for the heire is privy in bloud, and the Executor, Adminiſtrator, and Ordinary are privies in right. Privityberwixt Anceſtor and Heir, Teſtator and Executor Inteſtate and Adminiſtrator, Ordinary.

Litt. Sect. 336. Co. ib. 207. b. 4. & 208. a. 2.

23 If a feoffment be made upon condition, that the Feoffée ſhall pay xx l. unto the Feoffor upon ſuch a day, &c. And if payment be not made, that then it ſhall be lawful for the Feoffor, &c. to re-enter. If the Feoffée ſell the land to a ſtranger, payment or tender made by either of the Feoffées ſhall be effectual to ſettle the eſtate in the laſt Feoffée; for the firſt Feoffée may do it, becauſe he was privy to the condition; and the laſt may alſo do it, becauſe he was privy in eſtate, and in judgment of Law hath an eſtate and intereſt in the condition for the ſalvation of his tenancy. Feoffee upon condition may redeem.

Co. ib. 208. b. 3.

24 There is a diverſity betwéen a condition of an Obligation, or a condition upon a feoffment, where the Act that is local is to be done to a ſtranger, and where to the Obligée or Feoffor himſelf: As if one make a feoffment in fée, upon condition that the Feoffée ſhall infeoff a ſtranger, and no time limited, the Feoffée ſhall not have time during his life to make the feoffment; for then he ſhould take the profits in the mean time to his own uſe, which the ſtranger ought to have, and there is no privity betwéen the Feoffée and the Stranger, and therefore he ought to make the feoffment as ſoon as conveniently he may, and ſo it is alſo of the condition of an Obligation: But if the condition be, that the Feoffée ſhall re-enfeoff the Feoffor, there the Feoffee hath time during his life, by reaſon of the privity of the condition, that is betweem them, unleſſe the Feoffee in this caſe be haſtned by requeſt, &c. Condition from Obligor or Feoffee.

Co. ib. 209. a. 3

25 For the redemption of an eſtate in Mortgage, the Executors or heire may make the tender; For albeit the heire be a third perſon, yet is he no ſtranger; but he, and the Executors alſo are privies in Law, &c. Vide Litt. Sect. 337. Privies in law.

26 If

Privies by blood.

26 If a man enfeoff another upon condition, that he and his heirs shall render unto a ſtranger a yearly rent, &c. This is not rent (properly ſo called) and the reſervation is meerly void, becauſe there wants privity: But if A. be ſeiſed of certain lands, and A. and B. joyne in a feoffment in fee reſerving a rent to them both and their heirs, and the Feoffee grant, that it ſhall be lawful for them and their heirs to diſtrain for the rent ſo reſerved, this is a good grant of a rent to them both; becauſe B. is party and privy to the deed, as well as A. and the clauſe of diſtreſſe is a grant of the rent to A. and B. But if B. had been a ſtranger to the deed, then B. had taken nothing, &c. Co. ib. 213. a. 4. Littl. §. 347.

Privies in blood, eſtate, and right. A re-entry cannot be transferred.

27 If an eſtate be made upon condition, and clauſe of re-entry, at the Common Law none ſhall take advantage of ſuch re-entry, but only parties or privies; As if a man let land to another for term of life by Indenture, rendring rent to the Leſſor and his heirs, and for default of payment a re-entry, &c. If after the Leſſor grant the reverſion to another in fee, and the Tenant attorn, &c. In this caſe the advantage of re-entry is gone for ever; For albeit, if the rent happen to be arrear, the Grantee of the reverſion may diſtrain for it, becauſe it is incident to the reverſion; yet ſhall he not for that cauſe enter into the land, and out the Tenant; for that the advantage of re-entry (at the Common Law) belongs onely to the Leſſor himſelf, and unto his heire, as privy in blood unto him, and cannot by grant of the reverſion be transferred unto another; neither yet can it be left in the Leſſor or his heirs, becauſe he hath departed with his whole eſtate in the land: But if the Leſſor had died ſeiſed of the reverſion, his heire ſhould have taken advantage of ſuch re-entry; for that he is privy in blood unto him, as aforeſaid. And therefore there is a diverſity between the reſervation of a rent, and a re-entry; for a rent cannot be reſerved to the heire of the Feoffor, leaving out the Feoffor himſelf; but the heire may take advantage of a Condition, which the Feoffor himſelf could never do: As if I enfeoff another of an acre of ground, upon condition, that if my heir pay to the Feoffee, &c. 12 s. that he and his heirs ſhall re-enter, this condition is good: and if after my deceaſe, my heire pay the 12 s. he ſhall re-enter: for he is privy in blood, and ſhall enjoy the land as heire unto me. So alſo if a Biſhop, Arch-Deacon, Parſon, Prebend, or any other bodie politique or corporal, Eccleſiaſtical or Temporal, make a leaſe, &c. upon condition, his ſucceſſor may enter for the condition broken, for they are privies in right: Likewiſe, if a man have a leaſe for years, and demiſe or grant the ſame upon condition, &c. and die, his Executors or Adminiſtrators ſhall enter for the condition broken: for they are alſo privies in right, and repreſent the perſon of the dead.

Feoffor ſhall plead a deed Poll.

28 If feoffment be made by deed Poll upon condition, and becauſe the condition is not performed, the Feoffor enters; In this caſe, if either the deed Poll be pleaded by the Feoffee, and by that means ſhewed to the Court, or that the Feoffor otherwiſe happens the poſſeſſion of the ſaid deed albeit that deed properly belongs to the Feoffee, and not to the Feoffor; yet becauſe the Feoffor is privy unto it, he ſhall make uſe of it, and be received to plead it. Litt. Sect. 375.

Releaſe.

29 If two men do treſpaſſe to another, who releaſeth to one of them by his deed, the other treſpaſſor ſhall make uſe of that releaſe, if he have it to ſhew; becauſe they are parties and privies in the treſpaſſe; for likewiſe as two be bound in an obligation, and the Obligee releaſeth to one of them, both are diſcharged, &c.

Heir, Executor, privies.

30 If an action of Debt upon an Obligation be brought againſt an heire, he may plead in barre a releaſe made by the Obligee to the Executors, and yet the deed doth properly belong to the Executors and not to him; but becauſe both he and they are privies to the Teſtator, ſuch a Litt. §. 376. Co. ib. 232. a.

releaſe

releaſe ſhall enure as well to him as to them, if he be able to produce it, otherwiſe it ſhall not avail him.

Littl. §. 396, 397. Co. ib. 242. a.

31 If a man ſeiſed of lands in fée hath iſſue two ſons, and die ſeiſed, and the youngeſt ſon enters by abatement into the land, and having iſſue dies thereof ſeiſed, and the iſſue enters into the land, this ſhall not be a deſcent to take away the entry of the eldeſt ſon, or of his heirs; becauſe the Law intendeth that the youngeſt ſon entred claiming the land as heire to his father, and for that the eldeſt ſon claimeth alſo by the ſame title, viz. as heire to his father; therefore he and his heirs may well enter upon the ſecond ſon and his heirs, in reſpect of the privity of bloud betwéen them, and of the claim by one and the ſame title: But in the ſame caſe, if after the fathers death the eldeſt ſon had entred, and then the youngeſt ſon had diſſeiſed the eldeſt, and had died ſeiſed; that had béen a deſcent to take away the entry of the eldeſt or of his heirs; for that was a plain diſſeiſin, and the privity of bloud ſhall not help that caſe, &c. So alſo where lands were given to the husband and wife, and the heirs of their two bodies, and they had iſſue a daughter, and the wife died, and the husband had iſſue by another wife, four ſons, and died, and the eldeſt ſon abated and died ſeiſed; This deſcent did take away the entry of the daughter, becauſe there wanted privity of title, for that they claimed not by one and the ſame title: And in the firſt caſe, albeit the eldeſt ſon hath iſſue and dieth, and that after his deceaſe the youngeſt ſon or his heire entreth, and many deſcents be caſt in his line; Yet may the heires of the eldeſt ſon enter, in reſpect of the privity of the bloud, and of the ſame claim by one title: But if the youngeſt ſon make a feoffment in fée, and the Feoffée die ſeiſed, that deſcent ſhall take away the entry of the eldeſt, in reſpect that the privity of the bloud faileth: And admit, that the youngeſt ſon be but of the halfe bloud to his brother, yet is he of the whole bloud to his father; and therefore if he entreth by abatement, and dieth ſeiſed, it ſhall not bar his elder brother of his entry; Howbeit, if after the deceaſe of the Father, a Stranger both firſt enter and abate, upon whom the youngeſt ſon entreth and diſſeiſeth him, and die ſeiſed, this deſcent ſhall binde the eldeſt; for he entred by diſſeiſin, and not by abatement, &c. Privity of bloud and title.

Co. ib. 243. a. 1

32 If a man be ſeiſed of lands in the nature of Burgh English, and hath iſſue two ſons and die, and the eldeſt ſon, before any entry made by the youngeſt, entreth into the land by abatement, and dieth ſeiſed, this ſhall not take away the entry of the youngeſt brother, in reſpect of the privity of bloud betwixt them, and for that they claim by one title, &c. Privity of bloud and title.

Co. ibid.

33 If the father make a leaſe for life, and hath iſſue two ſons and dieth, and the Tenant for life dieth, and the youngeſt ſon entrude, and die ſeiſed, this deſcent ſhall not take away the entry of the eldeſt, cauſa qua ſuprà: But if the father had made a leaſe for years, it had béen otherwiſe; for that the poſſeſſion of the Leſſée for years maketh an actual free-hold in the eldeſt ſon, &c. The like.

Co. ib. 243. a. 2.

34 If two Coparceners make partition to preſent by turn, and one of them uſurp in the turn of the other, this uſurpation ſhall not put the other out of poſſeſſion, becauſe of the privity betwixt them, and for that they claim by one title; and albeit they do ſeverally preſent to the Ordinary, yet the Church is not litigious for the ſame reaſon. The like.

Co. ibid.

35 Upon a writ of Diem clauſit extremum, if the youngeſt ſon hath been found heire, the eldeſt had no remedie by the Common Law; becauſe they claimed by one title, &c. but now that is holpen by the Statute of 2 E. 6. cap. 8. The like.

Co. ib. 243. a. 3.

36 If two perſons be in debate for tithes, which amount to above the fourth part, and one man is Patron of both Churches, a Indicavit both Tithes under one Patron.

both lie, for that both Incumbents claim by one and the same Patron, &c. Fitz. N. B. 45.

Abeyance. 37 Assisa mortis antecessoris non tenet inter conjunctas personas, sicut fratres & sorores, &c. For these are privy in blood; but it lyeth against strangers, and then damages are to be recovered against a stranger, but not against his brother. Co.ib. 242.a.4 Littl. Sect. 398.

Privity of blood and title. 38 If a man seised of lands in fee, hath issue two daughters, and die the eldest enters into the whole, and hath issue and dies seised, and her issue enters, and hath also issue and dies seised, and the second issue enters, & sic ultrà. Yet the youngest daughter or her issue, as to her moity, may enter upon whatsoever issue of the eldest, notwithstanding such descent, because they claime by one and the same title, and by reason of the privity the entry of the eldest shall be accounted in law the entry of them both, &c. Howbeit in the same case, if both the sisters had entred after the death of their father, and had been seised, and then the eldest sister had disseised the youngest of her moity, and had issue, and died seised, and the lands had descended to the issue of the eldest sister, then could not the youngest sister nor her heirs have entred, &c. causa qua suprà: So also if one Coparcener enter claiming the whole, and make a feoffment in fee, and take an estate to her and her heirs, and hath issue, and die seised; this descent shall take away the entry of the other sister, because by the Feoffment the privity of the Coparcenary was destroyed, &c. Co.ib. 243.b.2.

In privies, privity in title. 39 If lands be given to two, and to the heires of one of them, he that hath the Fee-simple shall not have an action of Waste upon the Statute of Glocester, against the Joyntenant for life; but his heire shall maintain an action of Waste against him upon the same Statute, so that the heire shall in this case maintain an action, which the Ancestor could not: And this is in respect of the privity betwixt the Joyntenants, and for that they claim by one and the same title; whereas after the decease of the Joyntenant that had the fee, the Survivor claims by one title, and the heir by another, viz. the one by the first feoffment, and the other by descent from his father, &c. Co.ib. 247.b.9.

Privity in estate. 40 If land be let to a man for term of life, the remainder for life, the remainder in fee, and the Tenant for life alien in fee, and he in the remainder for life make continual claim before the dying seised of the Alienee, and after the Alienee dies seised, and then he in the remainder for life dies before any entry made by him; In this case, he in the remainder in fee shall take advantage of the continual claim made by the Tenant in remainder for life, and may enter upon the heire of the Alienee; because the right of entry, which the Tenant for life in remainder had gained by his entry, shall go to him in the remainder in fee, in respect of the privity of estate, and so it is also of him in the reversion in fee in like case; for he is also privy in estate, &c. Lkrl. §. 416. Co.ib. 252.a.3.

Like. 41 If two Joyntenants be disseised, and the one of them makes continual claim and dieth, the Survivor shall take benefit of his continuall claim, in respect of the privity of their estate. Co. ibid.

Like. 42 If Tenant in tail, the remainder in fee with warranty, have judgement to recover in value, and dieth before execution without issue, he in remainder shall sue execution; for he hath right thereunto as privy in estate. Co. ibid.

Seigniory per quæ servitia. 43 If a Seigniory be granted by fine to one for life, the remainder in fee, the Grantee for life dieth, he in the remainder shall have a per quæ servitia, for he hath right to the remainder, and is privy in estate. Co. ibid.

Co.lib.165.b.4. Littl. Sect. 491. Co.lib. 8. 151. b. 3. *Edward Altham's* caſe. Co. ib. 266. a. 1. Littl. §. 490. a. Infrà 114. Co.ib.184.b.3.

44 In a precipe quod reddat, a releaſe from the Demandant to the Vouchée is good, and yet the Vouchée hath nothing in the land; but the reaſon of that is, becauſe when the Vouchée entreth into the warranty, he becometh Tenant to the Demandant, and may render the land to him, in reſpect of the privity between them; Howbeit a ſtranger cannot releaſe to the Vouchée; becauſe in rei veritate he is not Tenant of the land: And therefore if after the Vouchée hath entred into warranty, and become Tenant in Law, a collateral Anceſtor of the Demandant releaſeth to the Vouchée with warranty, he ſhall not plead this againſt the Demandant; for that releaſe by a ſtranger is void, becauſe there wants privity, &c. So alſo it is, if the Tenant alien hanging the precipe, the releaſe of the Demandant to the Tenant the precipe is good, and yet he hath nothing in the land, &c. Co.l.1. 87.b. Corbets caſe, per Walmſley. Privity of vouchee, &c.

Co. Inſt. pars 1. 266. a. 1.

45 In time of vacation, an Annuity, that the Parſon ought to pay, may be releaſed to the Patron, in reſpect of the privity: But a releaſe to the Ordinary onely ſeemeth not good, becauſe the Annuity is temporal. Releaſe to the Patron good.

Littl. § 452. Co.ib.267.b.1.

46 A releaſe of a right made to him in reverſion or remainder, ſhall ayd & benefit him that hath the particular eſtate, for years or life, or an eſtate taile: So likewiſe ſhall a releaſe of a right made to the particular Tenant for life, or in tail, ayd and benefit him or them in the remainder, &c. becauſe they are all privies in eſtate, &c. Privies in eſtate.

Littl. Sect. 454. Co. ibid. 268. a.

47 If there be Lord and Tenant, and the Tenant is diſſeiſed, and the Lord releaſe to the Diſſeiſee all his right in the Seigniory and in the land; this is a good releaſe, and the Seigniory is thereby extinct; and this is by reaſon of the privity, that is between the Lord and the Diſſeiſee. And therefore there is an obſervable difference betwixt a Seigniory or Rent-ſervice, and a Rent-charge; For a Seigniory or Rent-ſervice may be releaſed & extinguiſhed to him, that hath but a bare right in the land, and the reaſon of this is in reſpect of the privity between the Lord and the Tenant in right; For the Diſſeiſee is not onely in that caſe as Tenant to the Avowry; but if he die, his heire within age, the heire ſhall be in ward, and if full age, he ſhall pay relief; and if he dies without heire, the land ſhall eſcheat: but there is no ſuch privity in caſe of a Rent-charge, for there the charge onely lyeth upon the land: A Seigniory may alſo be alſo releaſed by the Demandant to the Vouchee, as alſo by the Donor to the Donee, after the Donée hath diſcontinued in fee, and this is onely in reſpect of privity without any eſtate or right, &c. And therefore if the Donée in taile maketh a feoffment in fee, and the Donor releaſe to him and his heirs all his right in the land, this ſhall extinguiſh the rent; becauſe the Lord muſt avow upon him, and yet the Tenant in tail after the feoffment hath no right in the land; but the reaſon is in reſpect of the privity, and for that the Donor is of neceſſity compellable to avow upon him onely; For, if he ſhould avow upon the Diſcontinuee, then it ſhould appear of his own ſhewing, that the reverſion, whereunto the rent is incident, ſhould be out of him, and conſequently the Avowry ſhould abate: And ſo it was reſolved Trin. 18 Eliz. in the Common Pleas, in Sir Thomas Wiats caſe: Much more then ſhall a releaſe made by the Donor to the Donée, being diſſeiſed, extinguiſh the rent reſerved upon the gift in tail; becauſe in that caſe the Donée had eſtate right in him: Howbeit this is alſo in reſpect of the privity, that is betwixt the Donor and Donee; yet here by ſuch a releaſe no right of the reverſion ſhall paſſe to the Donée; becauſe at the time of the releaſe he had nothing but a right in the land, &c. For a releaſe of a right in lands and tenements to one that hath but a bare right, regularly is void: And to make ſuch a releaſe available, he, to whom it is made, Releaſe to privies good.

Littl. §. 455. Co.ib.267.a.4. & 273 a.2, &c.

made, muſt have either free-hold in Deed or in Law in poſſeſſion, or a eſtate in remainder or reverſion in fee, or fee-tail, or for life, &c.

Releaſe before entry void.

48 A man lets his land to another for terme of years, and the Leſſor releaſeth to the Leſſee all his right, &c. before the Leſſee enter into the land; that releaſe is voyd, as to enlarge his eſtate, the Leſſee having onely Intereſſe termini, and not poſſeſſion of the land; but if ſuch a Leſſee enter and have poſſeſſion, then ſuch a releaſe unto him after entry ſhall be avaylable to enlarge his eſtate, according to the limitation of the ſame; by reaſon of the privity that is betwixt them, by force of the ſame leaſe: Howbeit if a man make a leaſe for years to begin preſently, reſerving a rent, if before the Leſſee doth enter, the Leſſor releaſeth all the right that he hath in the land, albeit this releaſe cannot enlarge his eſtate, yet it ſhall in reſpect of the privity extinguiſh the rent: And ſo it is alſo, if a leaſe be made to begin at Michaelmas, reſerving a rent, and before the day, the Leſſor releaſeth all his right, &c. this cannot enure to enlarge the eſtate, nevertheleſſe it ſhall extinguiſh the rent in reſpect of the privity, as it was reſolved in the Exchequer 39, & 40 Eliz. betwixt Sir Henry Woodhouſe, and Sir William Paſton. Litt. Sect. 459. Co. lib. 270. b. 3, 4.

Releaſe of Joyntenant of advowſon.

49 A man granteth the next avoydance of an Advowſon to two, the one of them may before the Church become voyd, releaſe to the other; For albeit the Grantor cannot releaſe to them to encreaſe their eſtate, becauſe their intereſt is future, and not in poſſeſſion; yet one of them to extinguiſh his intereſt, may releaſe to the other in reſpect of the privity: But after the Church becomes voyd, then is ſuch a releaſe voyd; becauſe it is then (as it were) but a thing in action. Paſc. 38 Eliz. in Quare Impedit, per Denuet vers l'eveſque de Norwich in Com. Banco. Co. lib. 270. b. 1.

Releaſe to tenant at will good: to tenant at ſufferance, void.

50 A releaſe to a Tenant at will is good; becauſe betwixt the Leſſor and ſuch a Leſſee there is a poſſeſſion with a privity; but a releaſe to a Tenant at ſufferance (viz. who cometh to the poſſeſſion firſt lawfully, and then holdeth over) is utterly voyd, becauſe he hath a poſſeſſion without privity; As if a Leſſee for years holy over his terme, &c. a releaſe to him is voyd, for that there is no privity betwixt them, and ſo are the books that ſpeak of this matter, to be underſtood; for if a man entreth into land of his own wrong, and take the profits, his own wrongs, That he will hold it at the will of the owner, cannot qualifie his wrong, but he muſt needs be a Diſſeiſor, and then a releaſe to him is good; or if the owner conſented thereunto, then is he a Tenant at will, and that way alſo a releaſe is good: Howbeit, there is a difference, when one cometh to a particular eſtate in land by the act of the party, and when by act in Law; for if the Guardian hold over, he is an abator, becauſe his intereſt came by act in Law, &c. Litt. Sect. 460, 461. Co. lib. 276. b. 3. 271. a. 1, 2.

Privies, their ſeveral kinds.

51 Privity in the underſtanding of the Law is four-fold, 1 Privies in eſtate, as betwixt Donor and Donee, Leſſor and Leſſee, which privity is ever immediate: 2 Privies in Blood, as the heir to the Anceſtor, or betwixt Coparceners, &c. 3 Privies in Repreſentation, as Executors, &c. to the Teſtator. 4 Privies in tenure, as the Lord and Tenant, &c. which may be reduced to two generall heads, Privies in Deed, and Privies in Law. To theſe alſo may be added Privies in right, as Predeceſſor and Succeſſor, unleſſe you may ranke them with Privies in Repreſentation. Co. lib. 217. a. 3.

Releaſe without privity void.

52 A releaſe ſhall not enure by way of enlarging of an eſtate, unleſſe there be privity of eſtate, as betwixt Leſſor and Leſſee, Donor and Donee, for if A. make a leaſe to B. for life, and the Leſſee maketh a leaſe for years, and after A. releaſeth to the Leſſee for years, and his heirs; this releaſe is voyd to enlarge the eſtate; becauſe there is no privity betwixt A. and the Leſſee for years: So likewiſe if a man make a leaſe for 20 years, and the Leſſee make a leaſe for 19 years, if the firſt Leſſor, Co. lib. 272. b. 4. &c. Litt. Sect. 347.

Lessor doth release to the second Lessee, and his heirs, that release is void: Likewise if the Donee in tail, make a Lease for his own life, and the Donor release to the Lessee and his heirs, this release is void to enlarge the estate, &c.

Co. lib. 273. a. 4. Doct. Leyfields case. 53 If a man make a Lease for yeares, the remainder for life, a release by the Lessor to the Lessee for years, and to his heires, is good; for that he hath both a privity and an estate; and a release also to him in the remainder for life and his heires, is good also; for these are privies in estate, &c. But they ought to have the Deed ready in their fist to plead. Co. l. 10. 93. a. 4. Release on privies in estate, good.

Litt. §. 470, 471. Co. lib. 275. a. 4. 54 If my Tenant for terme of life lets the land to another for terme of the life of the Lessee, the remainder to another in Fee; Here, if I release to my Tenants Lessee for life, I am barred for ever, albeit there be no mention of Heires; because at the time of the release I had no reversion, but onely a right to have a reversion; for by such a Lease and the remainder over, which my Tenant made, my reversion was discontinued or rather devested, &c. And such release shall also enure to him in remainder, to take advantage thereof; as well as the Tenant for life; because he and my Tenants Lessee for life are privies in estate, &c. being (as it were) but as one Tenant in Law solely seised in his Demesne as in fee, at the time of the release made, &c. The like.

Co. lib. 275. b. 2. So likewise if a Disseisor make a Lease for life, and the Disseisee doth release all his right to the Lessee, this release shall enure to him in the reversion, &c.

Co. lib. 279. b. 2. 55 If there be Lord and Tenant, and the Tenant maketh a lease for life, the remainder in Fee, if the Lord release to the Tenant for life, the rent is wholly extinguished, and he in the remainder shall take benefit thereof: So also if the heire of the Disseisor be disseised and the Disseisor make a Lease for life, the remainder in fee, if the first Disseisee release to the Tenant for life, that shall enure to him in remainder, &c. The like.

Co. lib. 285. b. 4. 56. A release of actions shall onely extend to such as are privies to the Deed of release and to none other; and therefore if the Disseisee release unto the Disseisor all actions real, and the Disseisor maketh a feoffment in Fee, and an Assise is brought against them, the Feoffee shall not plead the release to the Disseisor; for that he is not privie to the release: So likewise, if a Disseisor make a Lease for life, the remainder in Fee, and the Disseisee release all actions to the Tenant for life; after the death of the Tenant for life, he in the remainder shall not plead that release: Also if the Disseisee release all actions to the Disseisor, and die, this is onely a barre to the Disseisee during his life, for after his decease his heir may have an action; as some have said (19 H. 6. 23. a.) And hereby may appear a manifest diversity between a release of a right, and a release of actions, &c. A release of actions extends onely to privies.

Co. lib. 286. a. 4. If the heir of the Disseisor make a Feoffment in Fee to two, and the Disseisee releaseth to one of the Feoffees all actions, and that Feoffee dieth, the Survivour shall not plead that release, &c.

Co. ibid. 297. b. 1. 57 If the Disseisor make a Lease for life to A. and B. and the Disseisee confirme the estate of A. B. shall take advantage thereof; because of the privity; for the estate of A. which was confirmed, was joynt with B. and in that case the Disseisee shall not enter into the land, and devest the moity of B. So likewise, if the Disseisor enfeoffe A. and B. and the heires of B. if the Disseisee confirme the estate of B. for his life, this shall not onely extend to his Companion: but also to his own whole Fee-simple, &c. Disseisee confirmes to joynt tenant of Disseisor.

Release from Diſſeiſee.

58 If a Feme Diſſeiſoreſſe make a Feoffment in Fee to the uſe of A. for life, and after to the uſe of her ſelfe in tails, and the remainder to the uſe of B. in Fee, and then taketh husband the Diſſeiſée, who releaſeth to A. all his right, this ſhall enure to B, and to his own uſe alſo; for they are all privies in eſtate, &c. Co. lib. 297. b. 4.

A Confirmation works not without privity.

59 A Confirmation ſhall never enlarge an eſtate, but when there is privity, neither yet ſhall it regularly abridge Services, but where there is privity: As if there be Lord and Tenant, and the Tenant holds of the Lord by Fealty, and 20 s. rent, the Lord may by his Deed confirme the eſtate of the Tenant to hold by 12 d. or by a penny, or by an halfe penny, and in this caſe the Tenant is diſcharged from all other Services, but what are contained in the ſaid Confirmation; and this is in reſpect of the privity between the Lord and the Tenant: but if there be Lord, Peine, and Tenant, the Lord cannot confirme the eſtate of the Tenant to hold of him by leſſer Services; for ſuch a Confirmation is void; becauſe there is no privity between them, &c. Co. lib. 296. a. 2. & 305. a. 4. & b. 2. Littl. Sect. 538

Attornment to ſeveral Joynt-tenants good.

60 If a reverſion be granted to two by Deed, and the Leſſee attorne to one of them according to the grant, this Attornment ſhall enure to both the Grantées, in reſpect of the privitie, &c. Co. lib. 318. a. 1. Co. l. 2. 67. b. *Tookers* caſe.

Attornment to the particular tenant veſts all the remainders.

61 If a reverſion be granted for life, the remainder in tail, the remainder in fee; the attornment to the Grantée for life ſhall enure to them in remainder, to veſt the remainders in them; for they are privies in eſtate, &c. And in this caſe, albeit the Tenant ſhall declare in expreſſe terms, that he doth onely attorne to the Grantée for life, and that thoſe in remainder ſhall take no benefit by that attornment after his death, yet ſhall the attornment be good to them all; for having attorned to the Tenant for life, the Law (which he cannot controll) doth veſt all the remainders, in reſpect of the privity, &c. Co. Inſt. pars 1. 310.

Upon grant of a Seigniory, or rent ſervice, the perſon to be charged ought to attorne.

62 Upon the grant of a Mannor or a rent ſervice, none ought to attorne, but he, that is privie, and preſently to be charged, and without ſuch attornment the grant availeth not; As if a man be ſeiſed of a Mannor, which is parcel in demeſne, and parcel in ſervice, if he alien this Mannor to another; all that holds of the Alienor, as of his Mannor, ought to attorne to the Alienee, otherwiſe the ſervices remaine ſtill in the Alienor: But if the Lord make a Leaſe for years, or for life of a Mannor, and the Free-holders attorne to the Leſſee; here, if afterwards the reverſion of that Mannor be granted, the Attornment of the Leſſee for years or life ſhall bind the Free-holders; for by their former Attornment, they have put the Attornment into the mouth of the Leſſee, their Attornment being involved within his. So likewiſe, if there be Lord and Tenant, and the Tenant lets his land to another for life, or makes a gift in tail, ſaving the reverſion; Vers, if the Lord grants the Seigniory to another, he in the reverſion ought to attorne to the Grantee, and not the Tenant for life, or in tail; for he is the true Tenant to the Lord and not they, &c. Alſo if there be Lord, Peine, and Tenant, and the Lord will grant the Services of the Peine; In that caſe, albeit in the grant he maketh no mention at all of the Peine, yet the Peine ought to attorn and not the Tenant paravaile, becauſe he is the next privie in tenure, that ought to be charged, &c. And therefore there is a diverſity to be obſerved betweene a rent ſervice, and a rent charge or a rent ſeck; for, as to a rent ſervice, no man (as hath been ſaid) can attorne, but he that is privie, &c. So in caſe of a rent charge, it behoveth, that the Tenant of the Freehold doth attorn to the Grantee, without reſpect of any privitie: And this is the reaſon, that the Diſſeiſor onely in the caſe of a grant of a rent charge, ſhall attorn; becauſe he is Tenant of the Free-hold; but in caſe of a grant of a rent ſervice, the Attornment Littl. Sect. 553. Co. lib. 311. a. 1. & b. 2. Littl. Sect. 557. Littl. Sect. 554. Littl. Sect. 555. Co. lib. 311. b. 2.

of the Diſſeiſee ſufficeth in reſpect of the privitie: And therefore if there be Lord and Tenant by homage, fealty and rent, and the Tenant is diſſeiſed, and the Lord grants the rent to another, the Diſſeiſee attorneth this is void; but if he had granted over his whole Seigniory, the attornment had been good; And the reaſon of this diverſity is; for that when the rent is granted onely, it paſſeth as a rent ſeck, and conſequently the Diſſeiſor, being Terre-tenant, muſt attorne; but when the intire Seigniory is granted, then the Diſſeiſee in reſpect of the privity may attorn, &c.

Littl. §. 557. Co. Inſt. pars 1. 312. a. 1.

63 If there be Lord and Tenant, and the Tenant let his Tenement to another for life, the remainder in Fee, and after the Lord grants the ſervices to another, &c. and the Tenant for life attornes, this is good enough; for he that is privie, and immediately Tenant to the Lord, muſt attorn, and that is, in this caſe, the Tenant for life: And ſo on the other ſide, if a Seigniory be granted to one for life, the remainder to another in Fee, the attornment to the Tenant for life is an attornment to him in remainder alſo; becauſe they are privies in eſtate, &c. Vide ſupra 61.

Attornment by the perſon chargeable, good.

Littl. Sect. 562.

64 If there be Lord and Tenant, and the Tenant make a Leaſe for life, ſaving the reverſion; Here, if the Lord grant the Seigniory to the Tenant for life in Fee; in this caſe, he in the reverſion ought to attorne to the Tenant for terme of life, becauſe he is the Tenant to the Lord, in reſpect of the privity, &c.

Attornment by the reverſioner.

Litt. Sect. 568. Co. ib. 316. a. 1.

65 Regularly upon the grant of a reverſion the Terre-tenant ſhall attorn; yet if Tenant in Dower, or by the Curteſie, grant over his or her eſtate, and afterwards the heir grant over the reverſion; in reſpect of the privity, the Tenant in Dower, or by the Curteſie ſhall attorn and not the Grantee; and likewiſe by reaſon thereof they ſhall be ſubject to an action of Waſt, ſo long as the reverſion remaineth in the heir; albeit they have granted over their whole eſtate; becauſe ſo long as the heir keepeth the reverſion, they are to be attendant upon him; for that their Grantee cannot be Tenant in Dower, or by the Curteſie, &c. F. N. B. 55. c. 56. a. f.

Attornment by Dower and Curteſie.

Littl. Sect. 571. Co. ib. 317. a. 1.

66 If land be let to a man for terme of years, the remainder to another for terme of life, reſerving to the Leſſor a certain rent by year; and livery is made to the Leſſee for years; in this caſe, if the reverſioner grant over his reverſion, attornment made either by the Leſſee for years; or by the Leſſee for life in remainder, ſhall be available to ſettle the reverſion in the Grantee, in reſpect of the privity of thoſe eſtates, which depend one upon another. P. 15. Eliz. in Brabridges caſe in Co. Ba. per Dyer.

Attornment by Leſſee for life or years, good.

Littl. Sect. 574. Co. ib. 318. a. 1, 2. Co. l. 2. 67. a. *Tookers caſe.*

67 If two Joyntenants let their land for life, reſerving rent, &c. if one of them releaſe unto the other, that releaſe is good, to ſettle the whole eſtate and rent in him, to whom the releaſe is made, without any attornment at all of the Tenant for life, in reſpect of the privity between the Tenant for life and them in the reverſion; for it is alſo, albeit there be three or more Joyntenants, and one of them releaſe to one of the other: Howbeit, there is a difference betwixt theſe miſſes; for the releaſe in the one caſe maketh no degree, but he, to whom the releaſe is made, is ſuppoſed in from the firſt Feoffor; whereas in the other it worketh a degree, and he, to whom the releaſe is made, is in the per by him, that made it, yet in neither of theſe caſes is there any attornment requiſite, by reaſon of the privity: But if one Joyntenant make a Leaſe for years, reſerving a rent and dieth, the other Joyntenant ſhall have the reverſion, becauſe he claimes paramount that Leaſe, as by the firſt Feoffor; Howbeit he ſhall not have the rent, for that there is no privity betwixt him and the Tenant for

Releaſe of one Joyntenant to another.

for years, as there was in the other case between the tenant for life, and them in the reversion, &c.

Attornment by the Joyntenant good for both.

68 If two joynt Lessees for years, or for life be ousted or disseised by the Lessor, and he enfeoffe another; Here, if one of the Lessees re-enter, this is a good attornment, and shall bind both in respect of the privity between the Joyntenants; For an attornment in Law is as strong as an attornment in Deed. Co. l. 2. 67. a. Tookers case. Co. lib. 319. a. 4.

Grant of a Seignory by Fine shall have effect before attornment.

69 If there be Lord and Tenant, and the Lord grants the Services by Fine; hereby the Services are immediately in the Grantee by force of the Fine; Howbeit he cannot distraine for any part of the Services without attornment, because an Avowry is in lieu of an action, which he cannot have without privity, nor privity without attornment, neither yet before attornment can he have an action of wast, a writ of entry ad communionem legem, or in consimili casu, or in casu proviso, a Writ of Customes and Services, a Writ of Ward, &c. But if a man make a Lease for years, and grant the reversion by Fine, if the Lessee be ousted, and the Comune disseised, the Comune without attornment shall maintaine an Assise: for that Writ is maintained against a Stranger, where there needeth no privity: And of such things as the Lord may seise or enter into without suing any action, the Comune before any Attornment may take benefit, as to seise a ward or heriot, or to enter into the lands or tenements of a ward, or escheates to him, or to enter for an Alienation of Tenant for life or years, or of Tenant by Statute Merchant, Staple, or Elegit, to his Disherison. Litt. §. 579. Co. lib. 320. a. 2. Litt. §. 580, 581, 582. v. Dyer R. 5. & 6.

Discontinuance barres entry.

70 One of the chiefe reasons, why a Feoffment in fee, gift in tail, or Lease for the life of the Lessee, made by the Tenant in tayle, doth make a discontinuance to take away the entry of him in reversion or remainder, in case the Tenant in tail die without issue, is, because the Tenant in tail, and he in the reversion or remainder are privies in estate, &c. Co. lib. 327. a. 2.

Where it is no Discontinuance.

71 If Tenant in tail make a Lease for the life of the Lessee, and afterwards grant the reversion to another; and the Tenant for life attorns, and dies, and the Grantee of the reversion entres in the life of the Tenant in tail, and after the Tenant in tail dies; In this case, the issue cannot enter, but is put to his Formedon; in respect of the privity between the Tenant in tail and his issue, the Grantee of the reversion having seisin and execution of the entailed lands in the life, and from the grant of the Tenant in tail himselfe: Howbeit, if Tenant in tayle make a Lease for life, and grant the reversion in fee, and the Lessee attorn as before; and that Grantee granteth it over to another, and the Lessee attorneth again to the last Grantee, and then the Lessee for life dieth; so as the reversion is executed in the life of Tenant in tail; yet this is no discontinuance, but that after the death of the Tenant in tail the issue may enter; because the last Grantee was not in of the grant of the Tenant in tail himselfe, but of the first Grantee, between whom and the issue in tail there is no privity, &c. Co. ibid. 333. b. 4. Litt. Sect. 600.

Discontinuance.

72 If at this day Tenant in tail make a Lease for life, and after by Deed indented and inrolled according to the Statute, he bargaineth and selleth the reversion to another in fee, and the Lessee dieth, so as the reversion is executed in the life of Tenant in tail; Albeit the Bargainee is not in the per by the Tenant in tail (but rather in by force of the Statute) yet in as much as he claimeth the reversion immediately from him, which is executed in his life time, this is a discontinuance: And so it is, and for the same cause, if Tenant in tail has granted the reversion to the use of another, and his heirs, &c. in Co. lib. 333. b. 4.

 respect

respect of the privity between the Tenant in tail and his issue, &c.

Co.lib.351.a.4. 73 If a woman grant a term to her own use, taketh Husband and dieth, the Husband surviving, shall not have this trust, but the Executors or Administrators of the Wife, for it consisteth in privity. P. 32 Eliz. in Canc. in Williams case, &c. A trust goeth to Executors and not to the Baron.

Co.Inst.pars 1 352.a.4. 74 In every Estoppel privity is required; for it ought to be reciprocal, viz. ought to binde both parties; and therefore (regularly) a Stranger shall neither take advantage, nor be bound by an Estoppel; But privies til blood, as the heir; Privies in estate, as the Feoffee, Lessee, &c; Privies in Law, as the Lord by escheat, Tenant by the Courtesie, Tenant in Dower, the Incumbent of a Benefice, and others that come under by act in Law, or in the Post, shall be bound, and take advantage of estoppels, &c. Estoppels.

Littl. §. 674, 675. Co.lib.356.a.3. 75 If a man let a house to a woman for life, saving the reversion to the Lessor, and after one sues a feigned action against the woman, and recovers the house against her by default, so that the woman may have against him a Quod ei deforceat, according to the Statute of Westm. the second; by this, the reversion of the Lessor is discontinued, so that he cannot have any action of Waste either against the woman; because she hath not possession of the house, nor against the recoverer by feigned title; for that there is no privity between the Lessor and him; but in this case, if the Feme take Baron, and the recoverer lets the house to the Baron and Feme; Here, the Feme is in her remitter by force of the first lease; and therefore the Baron and Feme make waste, the first Lessor shall have against them a writ of waste; because in as much as the Feme is in her remitter, the Reversion is also remitted to his reversion, and so (by consequent) the privity and power of bringing a writ of Waste is re-continued: For, when the reversion is devested, the Lessor cannot have an action of Waste; because the writ is, that the Lessee non vastet de exhæreditatione of the Lessor; and that inheritance must continue at the time of the action brought. It is likewise to be observed, that in an action of waste brought by the Lessor against the Lessee, the Lessee, in respect of the privity cannot plead generally, Ratione remanentiæ, That the Lessor hath nothing in the reversion; but he must shew how and by what means the reversion is devested out of him: for the Grantee of a reversion bringeth an action of waste, the Lessee may plead generally, that the Lessor hath nothing in the reversion, because in that case there wants privity, &c.

Littl. § 698. Co.lib.366.b.3. 76 Regularly a warranty commenced by disseisin, is, when the disseisin is done immediately to the heir that is to have it: But if the father be Tenant to the disseisee, the disseisin to the son, in case the father by covenant and consent maketh a feoffment to the use that the feoffee shall make a feoffment in fee, to whom the father shall release with warranty; and after executed accordingly, the father dieth: this warranty shall not bind, albeit the disseisin in law was not done immediately to the son, for the feoffment of the Lessee was disseisin to the father, who is particeps Criminis; Never the lesse by reason of the privity between the father and his Lessee, that which is done by the Lessee, is conceived done by the father: for that they are not strangers in estate, but like wise in this case, privies in combination: Semblably, where a father, and son, and a third person be Joyntenants in fee, the father maketh a feoffment in fee of the whole with warranty, and dieth, the son dieth; the third person shall not onely avoid the feoffment for his own part, but also for the part of the son, and he shall take advantage, that the warranty commenced by disseisin, albeit the disseisin was done to another; because all the time Joyntenants were also privies mutuall, &c. So if a man make a gift in tail to another brother, and the eldest disseise the Donee, and enfeoffeth Warranty commencing by disseisin, when not.

enfeoffeth another with warranty, the Uncle dieth, and the warranty deſcendeth upon the Donor, and then the Donee dieth without iſſue; Here, albeit the diſſeiſin was done to the Donee, and not to the Donor, yet the warranty ſhall not bind him; for what was done, in this caſe, to the Donee, ought to be adjudged done to the Donor, becauſe all theſe were privies in bloud, &c.

ticular e- and re- der, one

77 If there be Tenant for life, the remainder in fee by lawful and juſt title, he in the remainder may obtain and get the pretenced right or title of any ſtranger, and ſhall not thereby incurre the penalties of the Statute of the 32 H. 8. cap. 9. made againſt buying ſuch titles; becauſe the particular eſtate and the remainder are in Law accompted as one eſtate, in reſpect of the privity that is found between them. Co.ib.369.b.a.

ra formam

78 No man ſhall have a writ of Contra formam collationis, but onely the Feoffor and his heirs, who are privy to the deed, and privies in bloud. F.N.B. 211. c. Co.ib.384.b.1.

ee may

79 If a man enfeoffe A. and B. to have and to hold to them and their heirs, with a clauſe of warranty, Prædictis A. & B. & eorum hæredibus & aſſignatis; In this caſe, if A. dieth, and B. ſurviveth, and dieth, and the heir of B. enfeoffeth C. he ſhall vouch as Aſſignee, and yet he is but the Aſſignee of the heire of one of them; for in judgement of Law (and in reſpect of the privity) the Aſſignee of the heir is the Aſſignee of the Anceſtor, and ſo the Aſſignee of the Aſſignee ſhall vouch in infinitum, within theſe words (his Aſſignes.) Co.ib.384.b.3.

e like.

80 If a man enfeoffeth A. to hold to him his heirs and Aſſignes, A. enfeoffeth B. and his heirs, B. dieth; Here the heir of B. ſhall vouch as Aſſignée to A. to his heirs & Aſſignes, and Aſſignes of Aſſignes, and aſſignes of heirs (in reſpect of the privity) are comprehended within theſe words (his Aſſignes) which ſeemed to be a queſtion in Bractons time: And the Aſſignée ſhall not onely vouch, but alſo have a Warrantia cartæ. Co.ib.384.b.4.

l warran- without word

81 If a man doth warrant land to another without this word (Heires) his heirs ſhall not vouch: And, regularly, if a man warrant land to a man and his heirs, without naming Aſſignes, his Aſſignée ſhall not vouch; But if the father be enfeoffed with warranty to him and his heirs, the father enfeoffeth the eldeſt ſon with warranty and dieth; Here, in reſpect of the privity, the Law giveth to the ſon advantage of the warranty made to the father; and the father, becauſe by act in Law the warranty betwixt the father and the ſon is extinct. Co.ibid.

her, ner.

82 If a man at this day be enfeoffed with warranty to him, his heirs and aſſignes, and he make a gift in tail, the remainder in fée, and the Donée makes a feoffment in fée; Here, that Feoffée ſhall not vouch as Aſſignée; becauſe no man ſhall vouch as Aſſignée, but he that cometh in, in privity of eſtate; but he muſt vouch his Feoffor, and that Feoffor ſhall vouch as Aſſignée; Howbeit ſuch an Aſſignée may rebutt. Co.ib.385.a.3.

nter ut privi-

83 If a warranty be made to a man and his heirs without this word (Aſſignes) he grants over the land to another in fée, his Aſſignée ſhall not vouch, but the Aſſignée or any other Tenant of the land may rebutt: And albeit no man ſhall vouch or have a Warrantia cartæ, either as party, heir, or aſſignée, but in privity of eſtate; yet any that is in of another eſtate, be it by diſſeiſin, abatement, intruſion, uſurpation, or otherwiſe, ſhall rebutt by force of the warranty, as a thing annexed to the land, which ſometimes was doubted among the Sages of our Law. Co. ibid.

ſe of a of Errour.

84 If a man be out-lawed in a perſonal action, &c. and brings his writ of Error; if he, at whoſe ſuit he was out-lawed, will plead againſt him a releaſe of all actions perſonal, this ſeems to be no plea; becauſe by the ſaid action he ſhall recover nothing in the perſonalty, but onely to reverſe the Outlawry: Howbeit in that caſe, a releaſe of the writ of Er- Co.inſt.part 1. 289. a. 2.

rour is a good plea; For albeit the Plaintiff in the writ of Errour is to recover, or be reſtored to nothing againſt the party; Yet inaſmuch as the Plaintiff in the former action is privy to the record, a releaſe of a writ of Errour to him is ſufficient to barre the Plaintiff in the writ of Errour of the ſuit and vexation by the ſaid writ of Errour.

Co. ib.48.a.4. & 49.b.3. Co.ib.54.a.1. 85 If there be divers Feoffées, and the Feoffor makes livery onely to one of them according to the deed; In this caſe, the land paſſeth to them all in reſpect of the privity of their eſtate, &c. So likewiſe, if there be two Joyntenants of a Ward, and one of them do waſte, both ſhall anſwer for it, for the ſame reaſon. Livery to one Joyntenant good to both.

Co. ib. 54.a.1. 86 A Tenant by the Courteſie or in Dower, can hold of none but of the heire, and his heirs by deſcent; and therefore if they grant over their whole eſtate, and the Grantee doth waſte, yet the heir ſhall have an action of waſte againſt them, and recover the land againſt the Aſſignes; but if the heir either before the aſſignment had granted, or after the aſſignment doth grant the reverſion over, the ſtranger ſhall have an action of waſte againſt the Aſſignes; becauſe then in both caſes the privity is deſtroyed, &c. (Vide infrà 94.) Alſo if waſte be done by a ſtranger, they ſhall anſwer for it, &c. Waſt againſt tenant in dower, and the Court

Co.ibid.a.2.

Co.l.2.66.b.4. *Bookers* caſe. 87 There are two Jointenants for life, the reverſioner grants over his eſtate in fee, one of the Jointenants onely doth attorn, this is a good attornment of both to ſettle the reverſion in the Grantee, in reſpect of the privity and intireneſſe of their eſtate, &c. So if the Leſſor diſſeiſe his two Leſſees for life, and enfeoffe another, and one of the Leſſees re-enter, this act of one of them is an attornment in Law for both: If one Jointenant give ſeiſin of rent, that ſhall binde his companion, as it is agreed in 39 H. 6. 2. If a leaſe be made to two, and after the reverſion is granted to one of them, and he accepts the deed, this is holden good attornment in Law for both. Baldwin 28 H.8. Dyer 12. b. Attornment of one Joyntenant good for both.

Co.ib.67.a.2.

Co. l. 3.2.a.4. The Marq. of *Winchesters* caſe. 88 Albeit by the general words of the act of attainder of all rights, &c. and hereditaments, &c. made againſt the Lord Norris in the 28 H.8. all his lands, &c. in demeſne, reverſion, or remainder, and alſo all his right to lands and tenements, into which his entry was congeable, were given to the King; yet neither a writ of Errour, nor right of action to recover lands were given to him by the general words of the ſame act (although ſuch a right is truly a right and alſo an hereditament) becauſe ſuch a right, for which the party hath no remedy but by action onely, to recover the land, is a thing which conſiſts onely in privity, and which cannot eſcheat, or be forfeit as the Common Law: Of this ſort are the right of Formedon in deſcender, the right of action upon a diſſeiſin, and a deſcent caſt, and the like. Co.lib.1.3.a.4. in Engleſeilds caſe. Right of action not forfeited by attainder.

Co. ib.4.a.3,4. 89 Upon judgement given againſt Tenant for life, or againſt Tenant in tail (ſince the Statute de donis conditionalibus) he in the reverſion or remainder may have a writ of Errour, albeit he was not party to the ſuit by aid prayer, voucher, or receipt; But he could not in that caſe bring that writ till after the particular eſtate determined; Howbeit if he was party and privy to the firſt record by aid prayer, voucher, or receipt, then might he have a writ of Errour preſently during the life of the Tenant in tail or for life; for that he was in that caſe party and privy to the firſt record, &c. A reverſioner ſhall bring Errour, &c.

Co. l. 3. 6. a. *Cuppledikes* caſe. 90 Baron and Feme are ſeiſed of lands to the uſe of them, and the heirs male of the body of the Baron, the remainder in fee to another, the Baron acknowledgeth the fine of the land in fee, and a ſtranger recovers the land againſt the Conuſee, who voucheth the Baron onely, and he voucheth over the common Vouchee, and judgement and ſeiſin are given accordingly, the Feme being ſtill in life; This recovery ſhall binde the remainder, for here was a lawful Tenant to the precipe, and albeit Upon fine vouching tenant in tail the remainder is barred.

albeit the Baron who had the eſtate tail, was onely vouched, and not the Feme, who has a joynt eſtate with him: Yet the Baron coming in as Vouchee, he comes in privity of the eſtate tail, and not of any other eſtate, and then the recovery in value gives recompence both to the eſtate tail which the Baron hath, and alſo to the remainder over, becauſe although by the fine the eſtate tail, as alſo the eſtate of the Feme, and the remainder were all deveſted or diſcontinued; yet the Baron as Vouchee ſhall be in judgment of Law in of his eſtate tail. And the caſe is the ſtronger, inaſmuch as the eſtate of the Feme was put to a right; So that the Baron comes in now, as ſole Tenant in tail, and cannot be joyntly ſeiſed with the Feme, becauſe ſhe was not Vouchée; Neither yet can the Baron be in of any other eſtate; for that he once had an eſtate tail, and now comes in as Vouchee; and therefore in that caſe, in reſpect of the privity ſhall be ſaid in, as of the eſtate tail, and not otherwiſe: But if the wifes inheritance had been joynt with her husbands, it might be doubted, 108. 28.

The like. 91 If A. be Tenant in tail, the remainder to B. in tail, the remainder to C. in tail, the remainder to D. in fee, A. makes feoffment in fee, the Feoffee ſuffers a common recovery, in which B. is vouched, and he over the common Vouchee; In this caſe A. is not bound, but B. and all the remainders over are barred: For albeit by the feoffment of A. all the remainders were diſcontinued, and the eſtates of B. C. and D. were converted to meer rights, and that the remainder could never be remitted before the eſtate tail in poſſeſſion were re-continued; Yet in caſe of a common recovery (which is the common aſſurance of the land) he that comes in as Vouchee ſhall be in judgement of Law in, in privity of the eſtate, which he ever had; although the precedent eſtate, upon which the eſtate of the Vouchee depended, were deveſted or diſcontinued, &c. Co. ibid.

Divers ſorts of privities, diverſified. 92 There are three manner of privities, viz. 1 In reſpect of the eſtate onely. 2 Of the contract onely. 3 Of the eſtate and contract together: Privity of the eſtate onely, as between the Grantée of the Lord and the Leſſee, or (if the reverſion eſcheat) between the Lord by eſcheat and the Leſſee, ſo alſo between the Lord and the Aſſignee of the Leſſee; there is privity in eſtate onely, for that there is no contract betwixt them: Privity of contract onely, which extends onely to the perſon of the Lord and the perſon of the Leſſee, as when the Leſſee aſſigns over his intereſt, notwithſtanding ſuch aſſignment the privity of the Contract ſtill remains between them (as to bring againſt the Leſſee an action of Debt for rent arrear, or the like) albeit the privity of the eſtate be removed by the act of the Leſſee himſelf: Privity of eſtate and contract together, is between the Lord and Leſſee themſelves, ſo long as the eſtate is continued betwixt them, &c. Vide Dyer 4. b. 1. 24 H. 8. Co. l. 3. 22. b. 4. *Walkers* caſe.

The like. 93 Lord and Tenant, the Tenant makes feoffment in fee; in this caſe, the privity which was between them in eſtate, or in tenure, is gone; Nevertheleſſe for the arrearages due, as well before, as after the feoffment until notice, &c. the privity between them as to the avowry both ſtill remain: And at the Common Law, before the Stat. of Quia emptores terrarum, if the Tenant had made a feoffment to hold of the chief Lord, the Feoffée by no tender that he could make, could compel the Lord to avow upon him; but the Lord might ſtill avow upon the Feoffor, for that the privity did ſtill remain, and the Tenant by his own Act could not change the avowry of the Lord, &c. Howbeit in the firſt caſe, if the Lord grant over his Seigniory, or if the Feoffor die, there the privity as to the avowry is deſtroyed; for that is perſonal, and holds onely between the Lord and the Feoffor themſelves in perſon: So alſo if after Co. ib. 23. b. 4.

the

the aſſignment of the leaſe, the Leſſor grant over his reverſion, the Grantée ſhall not have an action of Debt againſt the Leſſée; For the privity of contract, as to the action of Debt holds onely between the Leſſor and the Leſſée themſelves in perſon: So in the ſame caſe, if the Leſſée die, the Leſſor ſhall not have an action of Debt againſt his Executors, for the privity conſiſts onely between the Leſſor and Leſſee, &c.

Co. ib. b. 3. 94 If Tenant in Dower, or Tenant by the Courteſie aſſigne over their eſtate, yet privity of action remains between the heir and them, ſo that he ſhall have an action of Waſte againſt them for Waſte done after the aſſignment: But if the heir grant over the reverſion, then the privity of the Action is deſtroyed, and the Grantee cannot have any action of Waſte ſave onely againſt the Aſſignee; becauſe between them there is privity of eſtate; but between the Grantee, and the Tenant in Dower, or Tenant by the Courteſie there is no privity at all, Vide ſuprà, 86. Dower, Courteſie, Waſte, &c.

Co. ib. b. 4. 95 If the Leſſor enter for the condition broken, or the Leſſee ſurrender to the Leſſor; Now is the eſtate and term determined, and yet the Leſſor ſhall have an action of Debt for the arrearages due before the condition broken, or the ſurrender made, as appears by F. N. B. 120, 122. 30 E. 3. 7. 6 H. 7. 3. b. (againſt the book of 32 Edw. 3. Tit. Barre 262. which is not law) And this is in reſpect of the privity of the Contract, which ſtill remains between the Leſſor and the Leſſee, &c. Privity of contract.

Co. ibid. *Vagle & Glovers* caſe. 96 If the Leſſee for years aſſign over his Intereſt, and the Leſſor by deed indented and enrolled according to the Statute, bargain and ſell the reverſion to another, the Bargainee ſhall not have an action of Debt againſt the Leſſee; becauſe there is no privity between them; Nevertheleſs, after the aſſignment, the Leſſor himſelf might have an action of Debt againſt the Leſſee himſelf for rent due after the aſſignment; becauſe the privity of the contract between the Leſſor and Leſſee doth ſtill continue, as long as the Leſſor retains the reverſion: So likewiſe if an Executor of a Leſſee for years aſſignes over his intereſt, an action of Debt lyeth not againſt him for Rent due after the aſſignment: Alſo if Leſſee for years aſſigne over his intereſt and die, the Executor ſhall not be charged for the rent due after his death; For by the death of the Leſſee the perſonal privity of the contract as to the action of Debt (in both theſe caſes) was determined, The like.

Co. l. 3. 24. a. 1. *Overton* and *Sydhals* caſe.

Co. ibid. *Brome* and *Hores* caſe. 97 A. lets to C. 3 acres of land for years, reſerving rent, the ſaid C. aſſignes all his eſtate in one acre to another. A. ſuffers a common recovery to the uſe of B. in fee, who brings an action of Debt againſt the firſt Leſſee, this action will well lie; for inaſmuch as the Leſſee aſſignes his intereſt but for part, & remains poſſeſſed of the reſidue, not onely the Leſſor, but alſo his Aſſignee, or he that claims under him, ſhall have an action of Debt for the intire rent againſt the Leſſee; becauſe there was not onely privity of contract, but alſo privity in eſtate and contract together; and therefore in this caſe, the action runs with the eſtate: So alſo at the Common law before the Stat. of Quia emptores terrarum, if the Tenant had made feoffment in fee of part of the tenancy; In that caſe there was no apportionment, but the Lord or his Grantee ſhall avow upon the Feoffor, for that he remains Tenant in reſpect of the reſidue: Howbeit, if he had made feoffment of all, then the Grantee of the Lord ſhall not avow upon him, &c. Privity of eſtate and contract.

Co. ibid. *Marrow* and *Turpins* caſe. 98 In debt againſt two Adminiſtrators upon a leaſe made to their Teſtator, the Defendants plead, that before the rent arrere, one of them had aſſigned all his intereſt to J. S. of which the Plaintiff had notice, and accepted the rent, by the hands of the Aſſignee, due ſince the aſſignement, and before this rent now demanded was due; Here, upon the demurrer The like.

demurrer of the Plaintiff the judgement paſſed againſt him; becauſe the privity of the contract was determined by the death of the Leſſee, and for that after the aſſignment made by the Adminiſtrator, nothing lyeth not for rent due after ſuch aſſignment. See Dyer 6 Eliz.

ter.

99 C. being poſſeſſed of a Peaſe with the appurtenances for 30 years, demiſed all his intereſt therein to R. and after C. (having quarter with his whole intereſt in the Peaſe) by Indenture demiſed a Stable belonging to the ſame unto W. for ſix years. And then R. demiſeth the whole Peaſe with the appurtenances to C. for 21 years. In this caſe, if W. be impleaded for the Stable by C. W. ſhall vouch and maintain the leaſe of the Stable for ſix years againſt C. by reaſon of conclusion; becauſe all parties and privies in eſtate or intereſt are bound by Eſtoppels. Co. l. 4. 32, a. 3. in *Rawlins* caſe.

amanty and dition im- ed in ex- ge and tion.

100 The warranty which is ſcita implyed in every exchange, runs onely in privity; For none ſhall vouch by force thereof, but onely ſuch as are parties to the exchange or their heirs and no Aſſignee; Neither an Aſſignee may rebutt by force thereof, albeit the exchange be without deed, as appears (3 E. 3. Gar. Form. 44. 2 E. 2. Qui in vita, 16.) There is the ſame law alſo in caſe of partition; and as it is in caſe of warranty, ſo it is alſo in caſe of the condition, which the Law doth annex upon every exchange and partition; As if A. exchange with B. and B. aliens to C. who is ouſted by title paramount; In this caſe C. ſhall not enter upon the other; for as the warranty, ſo alſo the condition annexed in privity to ſuch onely as are parties to the exchange, and their heirs, and doth not extend to the Aſſignee: So likewiſe none ſhall have a Contra formam doniſement, but the Feoffee, or his heirs: Neither the Aſſignee may rebutt. (Vide F. N. B. 163. c. 21 H. 6. 30. b. 9 H. 6. 7. 10 H. 7. 11. a.) But in the ſame caſe if the title of A. who entered not, be tolled, he ſhall enter into the land which he gave in exchange, albeit B. hath aliened it over, &c. Vide ſupra 8. & 78. Co. l. 4. 121. b. 1. in *Baſtards* caſe.

Joyntenants deaſe at will.

101 If two Joyntenants make a leaſe at will, rendring rent, and one of them dies, all ſurvives to the other, and the Leſſee continues his poſſeſſion: Here the ſurvivor ſhall have an action for the whole rent, in reſpect of the privity. Fitz. dit. Co. l. 5. 10. b. *Hexſteads* caſe.

Grantee pre- ment to voydance ſubſequent

102 If a Grant be made of an Advowſon in grofs, the next avoydance to another the Incumbent dies, the Grantee preſents: Here, albeit the Grantor nor his Anceſtors, or thoſe whoſe eſtate he hath ever preſented, but the preſentment of the Grantee ſhall be adjudged ſufficient to ouſter the Grantor and his heirs, and ſhall ſerve to make title in a Quare Impedit. And this ſeems to be in reſpect of the privity between the Grantor and the Grantee; for that the Grantee preſents in the right and title of the Grantor. And the reaſon if the preſentment be allowed in the Leſſee and Donee, and ſo in the Leſſors Donee, this is not conſiſtent to the poſſeſſion of the Leſſee or Donee in the preſentment of the Donee or Leſſee, and the preſentment of the Leſſor or Donor is conſiſtent and conſiſtable with the Eſtate for years of a Reſignation, or Donation in preſenting to the ſame of the ſervice, this ſhall be good ſeiſin for ſaving the reverſion, and with this agrees F. N. B. 179. b. 45. E. 3. 26. Co. l. 5. 97. b. 4. The Counteſſe of *Northumberlands* caſe.

al para- may ge tenant vail.

103 If the Lord paramount be not compellable to take his ſervice of the Mean, but he may diſtrain upon the Mean for his ſervice, the Mean paramount ſhall not be compellable to accept his rent by the hands of the Tenant paravail, or the Tenant for life, by the intention of the ſtatute of Weſtm. 2. cap. 1. Capitalis Dominus ſervitia & conſuetudines ſibi debitas de proximo tenente ſuo, & non de aliis tenentibus quam proximi tenentis ſui, & ſic tenentes in dominico amiſerunt prout Co. l. 6. 58. a. 2. in *Bredimans* caſe.

ficua tenementorum ſuorum; Non habeat capitalis dominus poteſtatem diſtringendi tenentes in dominico, dum prædictus tenens offerat ei ſervitia debita & conſueta.

Co. l. 7. 7. b. 3. The Earl of *Bedfords* caſe.

104 If Tenant in tail of lands holden by Knight-ſervice make leaſes not warranted by the Statute of 32 H. 8. cap. 28. and die, his heir within age; the Guardian in privity and right of the heir in tail ſhall avoyd thoſe leaſes during the time that the heir is in Ward: ſo alſo if a Biſhop make a leaſe for years not warranted by the Statute, (ſo that the leaſe is voydable by the Succeſſor) and dies, the King ſhall avoyd that leaſe, during the vacation of the Biſhopick, viz. in privity and right of the ſame Biſhopick; for that the Guardian in the one caſe, and the King in the other are not ſtrangers, but privies in right: Howbeit in the caſe of the Guardian, he ſhall avoyd the leaſe, as to his own intereſt onely; but ſhall not prejudice the heir of his election at his full age to confirm the ſame leaſes if he pleaſe: For, Cuſtos ſtatum hæredis in cuſtodia ſua exiſtentis meliorem non deteriorem facere poteſt: ſo likewiſe, if the heir within age before the entry of the Guardian, or the Anceſtor being within age, make a leaſe for years reſerving rent, the Guardian may enter in privity and right of the heir, and ſhall avoyd the leaſe; Howbeit the Lord by eſcheat ſhall not avoid voydable eſtates made by his Tenant, who was an Infant; for regularly none ſhall avoid voydable eſtates by reaſon of infancy, but onely ſuch as are parties or privies, viz. the Infant himſelf or his heirs, being privies in blood, and in the caſe aforeſaid the Guardian as privy in right, &c.

Guardian or Biſhop may avoid voidable eſtates.

Co. l. 7. 13. a. 1. in *Englefields* caſe.

105 Thomas Duke of Norfolk, in Anno 11 Eliz. conveyed his lands to the uſe of himſelf for life, and after to the uſe of Philip Earl of Arundel his eldeſt ſon in tail, with divers remainders over, and with proviſo, that if he ſhould be minded to alter, and revoke the ſaid uſes, and ſhould ſignifie his mind in writing under his own hand and ſeal, ſubſcribed by three credible witneſſes, that then, &c. and afterwards the ſaid Duke was attainted of high treaſon: In this caſe, that proviſo or condition was not given to the Queen by the act of the 33 H. 8. cap. 20. becauſe the performance thereof was perſonal, and inſeparably annexed to the perſon, viz. to ſignifie his mind by writing under his own hand, which none could do but the Duke himſelf; upon which point all the poſſeſſions of the Dukedome ſo conveyed as aforeſaid, were ſaved, and not forfeited by the attainder. Vide 44. 8.

Power of revocation.

Co. ib. 13. a. 3.

106 The Templers held divers of their poſſeſſions in Frankalmoign (which tenure, as Littleton ſaith, is annexed in privity to the blood of the Donor) and after they were diſſolved, and by Parliament, Anno 17 E. 2. their poſſeſſions were given to the Hoſpitalers, to hold them in the ſame manner as the Templers held; yet by thoſe general words they held not in Frankalmoign; becauſe the privity of the tenure on the Tenants part continued not, and that privity being perſonal and inſeparable, by the general words of the act was not transferred to the Hoſpitalers: There is the ſame law of the impropriation of a Church, which is alſo an incident inſeparable to the houſe of Religion, whereunto the Church is impropriate: And therefore it is adjudged P. 3. E. 2. that the Hoſpitalers by the ſaid Act of the 17 E. 2. ſhould not have an Impropriation, which was formerly inſeparably annexed to the Corporation of the Templers; becauſe ſuch a thing as that conſiſting in inſeparable privity by the general words of an Act of Parliament ſhall not be transferred to others.

Privity ſtrong er than the general words of an Act of Parliament.

Founderſhip inſeparable.

Co. l. 7. 12. a. 4. *Englefields* caſe.

107 In tempore H. 8. Brook tit. Corodie 3. it is holden, that a Founderſhip, which is inſeparably annexed in privity to the blood of the Founder, ſhall not be forfeited by attainder.

Founderſhip inſeparable.

108 There

108 There are three manner of privities, viz. privity in blood, privity in estate, and privity in Law: Privies in blood are meant of privies in blood Inheritable, and that is in 3 manners, viz. Inheritable, as heir general, heir special, or heir general and special: Privies in estate are, as Joyntenants, Baron and Feme, Donor and Donee, Lessor and Lessee, &c. Privies in Law are; as when the Law, without blood or privity of estate, casts the land upon one, or makes his entry congeable, as the Lord by escheat, the Lord that enters for Mortmaine, Lord of a Villaine, &c. And first, privies inheritable, as heir general, shall take benefit of Infancy; and therefore if an Infant Tenant in Fee simple, make feofment and die, his heir shall enter; there is the same Law also of him that is heir general and special; as if a man give lands to another and the heirs male of his body, and the Donee within age make feofment in Fee, his Sonne, that is heir general and special, shall enter: It is so also of him, that is heir special and not general, as if, in the same case, the Donee hath issue two Sonnes, and the eldest hath issue a daughter, and the Donee dies, and the eldest Sonne within age makes feofment, and dies without issue male, the youngest Sonne is special heir per formam doni, and shall avoid the feofment of his brother, although he is not heir general; because he is privie in blood; and hath the land by descent. So if lands be given to one and the heirs female of his body, and the Donee, having issue a Sonne and a daughter, makes feofment within age and dies; Here, the daughter, being heir special (unto whom the right of entry descends) shall enter, and not the Sonne, unto whom nothing descends: So it is likewise of the heir in Borough English; for in all cases, when any claimes by descent, as heir special, he shall take benefit of a right of entry, which descends unto him for the infancy of his Ancestor: There is likewise the same Law, if his Ancestor were non compos mentis at the time of making the feofment; because in those and such like cases, the heir general cannot enter; for that no right or title descends unto him; but the right descends to the heir special, &c. Howbeit privies in estate (unlesse it be in some special cases) shall not take advantage of the infancy of the other; and therefore if Donee in tail within age make feofment in fee and die without issue, the Donor shall not enter; because there was onely privity in estate between them, and no right accrued to the Donor by the death of the Donee: So if there be two Joyntenants in fee within age, and the one maketh feofment in fee of his moitie and dies; the survivour cannot enter by reason of the infancy of his companion; because by his feofment the joynture was severed, so long as the feofment remaines in force; And therefore in such case the heir of the Feoffor shall have a Dum fuit infra ætatem, or shall enter into the moity: But if there be two Joyntenants within age, and they joyn in a feofment; in that case a joynt right shall remaine in them, and therefore if one of them die, the right shall survive, and the survivor shall have the right of the land, as from the first Feoffor; which makes Littleton seem to hold (cap. Discontinuance fol. 44.) that the Survivour may enter, in respect of the right accrued unto him; For otherwise (indeed) this mischiefe would ensue, that the heir of that Feoffor which died, cannot enter; for that the right survived, nor yet the survivor, because he shall not take advantage of the infancy of his companion, but shall be forced to his writ of Right, which without question he may have; for that after the feofment, the Joyntenants might have joyned in it, &c. Lastly, privies in Law, as Lord by escheat, &c. shall never take advantage of the privity of infancy; because he is a stranger to it; and

Co. l. 8. 42. b. 4, &c. in *whitinghams* case.

Co. ib. 44. a. 4.

when the Feme dies without heire, the reversion is extinguished. The same Law of Copyhold and non sane memory.

109 A. grants lands to B. in fee, and further that if B. or his heirs pay unto A. upon such a day at such a place 10 s. that then B. shall have an estate of Fee-simple in the lands to him and his heirs; In this case, the privity of the estate ought to be continued, and the condition ought to be performed by B. or his heirs, and the performance thereof is not avoidable, if the estate be altered (and this is proved by the Lord Lovels case in Pl. Com.) by if the Lessee for life or for years, or any other estate, who hath such a condition annexed to his estate, alien before the Condition performed, or if the Lessee for life or years surrender unto the Lessor, he shall never after take benefit of the Condition; because the privity of the estate in such case ought to continue, for that the encrease of estate ought to enure upon the particular estate, as upon a foundation: And therefore in this case, if a Lease for life or for years, or the Donee alien all their estate, and take an estate again, and after perform the Condition yet nothing shall thereby increase unto him; because by the absolute alienation the privity for a time was absolutely destroyed, which by any taking again of the estate cannot be revived; as if a Coparcener after partition makes feoffment in fee, and then takes again an estate to her and her heirs; in this case the privity of the estate to have all to derogate the warranty paramount is destroyed (11 H. 4. 22. Vide 38. E. 3. 20. b.) but if Lessee for life grant his estate upon Condition, and enter for the Condition broken, and after that performs the Condition annexed to his estate, there performance shall accrue unto him; for the privity was not absolutely destroyed, and when he enters for the Condition broken, he is but in his ancient estate; neither yet is it necessary that the particular estate should continue in all respects; but, if any privity of estate continues, as is capable of the increase of an estate, it sufficeth. And therefore if such a Lessee for life make a Lease for years, or such a Lessee for years make a Lease for a longer term, or if such a Lessee make a Lease for his own life or for years; yet for the privity of estate, that still continues in them, they are capable of further increase of their estate: Howbeit if such a Tenant in tail make a Lease pur auter vie; there he is not capable of any increase; because he hath gained a new reversion after, and the first privity remaineth not; And yet in that case if the Lessee for life die, then is the first privity of the estate revived. So if a man make a gift in special tail with such a condition of encrease, as aboveſaid, and after the Feme dies without issue: so that he is now become Tenant in tail after possibility of issue extinct; In this case albeit the estate be changed, yet in as much as the privity both still remaine, he may by the performements of the Condition have fee afterwards. So also if a Lease be made to two with condition to have fee, and the one dies, the survivor may perform the condition and have fee; but if the same Joyntenants have made partition of the term, the condition is destroyed; for the estate is ought to increase to them joyntly, and not severally, &c. Vide 34. 11.

Accrüer of estate.

Co. l. 8. 75. b. 1. The Lord *Stafford's* case.

110 There is a greater privity, when the Feme is endowed of the immediate estate, which the heir of the Baron hath by descent, than when she is endowed either by a Stranger, or of any other estate; for, if the Feme be endowed of the immediate estate descended to the heir of the Baron, if she be impleaded after wards; she shall vouch the heir, and shall be newly endowed of other lands, which the heir hath; but if the Feme be endowed by the Alienee of the Baron or of the heir, if she be impleaded, she shall not vouch the Alienee to be newly endowed

Co. l. 9. 17. b. 2. *Anne Bedingfields* case.

Voucher in Dower.

voweries: And this is the cause, that when a Feme brings a Writ of Dower against the Alienee of the Baron, &c. and he vouch the heir, the Demandant may testifie, that the heir hath lands descended unto him in the same County, (for to another County the original doth not extend) and may pray, that she may be endowed of his estate: and this is (for the benefit of the Voucher,) to be newly endowed. Vide in 4 E. 3. 36. & 6 E. 3. 11. The Tenant in a Writ of Dower voucheth the heir of the Baron, and the Demandant testifies, that he hath lands by descent, &c. in the same County, and judgement was given against the heir; but if he had had none there, it should have been given against the Tenant. In 6 E. 3. 20. The Feme of a stranger brings a Writ of Dower, and the Tenant voucheth the heir, &c. the Demandant shall not recover against the heir, because there wants privity: In 18 E. 3. 36. in Dower, the Tenant voucheth, and the Vouchee voucheth the heir of the Baron of the Demandant, the Demandant testifies that the heir hath assets by descent in the same County; here, the Demandant shall not recover against the heir, but against the Tenant onely; for in this case, there is not immediate privity betwixt the Demandant and the heir; because the Demandant shall recover against the heir onely, when the Tenant in Demesne voucheth him, and not when the Vouchee of the Tenant in Demesne voucheth him.

Detainment of Charters no plea. 111 No stranger, albeit he be Tenant of the land, and hath the evidences conveyed unto him, may in a Writ of Dower plead Detainment de Chartres; for, this plea lies onely in privity, viz. for the heir of the Baron: And the heir also in this case may divers wayes be in the degree of a stranger, so that he shall be disabled from pleading Detainment of Chartres; as 1 If the heir hath the land by purchase; 2 If the heir pay deliver the Charters to the Feme (as it is resolved 7 E. 3. Dower 191.) 3 If the heir be not immediately vouched, viz. by the Tenant in the Writ of Dower, but by his Vouchee (18 E. 3. 36.) 4 If the heir comes in as Vouchee, having no lands in the County, where the Dower is demanded; 5 If he comes in as Tenant by receit, as appears in 16 E. 3. tit. Dower 67. and by many other bookes: And the reason hereof is manifest by the true pleading of detainment of Chartres: for he, who pleads that plea in barre of Dower, ought to plead, that he hath been alwayes ready and yet is, to render Dower, if the Demandant will deliver unto him his writings; now Tenant by receit, as such a Vouchee, as is aforesaid, cannot plead, that he hath been alwayes ready to render Dower; for that the Demandant cannot recover against the heir in such cases (viz. either being Vouchee, or received) neither can he render unto the Demandant the Dower, which by the Law doth belong unto her, &c. Co. lib. 18. a. 3.

Entry within five years by Guardian, &c. 112 Upon a fine acknowledged of lands according to the Statute of 4 H. 7. cap. 24. The Guardian by nurture or in soccage may enter in the name of the infant, who hath right to enter into the same lands, and this shall vest the estate in the infant without any commandment or assent; because there is privity between them: So likewise he in the reversion expectant upon an estate for life or years, or the Lord of a Tenant by copy, &c. may well enter (within that Act) in the name of the Tenant for life, Lessee for years, or Tenant by Copy, and also in their own right, as well to save their own Franktenement and Inheritance, as also the said particular interests; for the Lessor, or the Lord are not Strangers, because they are privies in estate: And as the entries of those particular Tenants shall availe the Lessor and the Lord in those cases in respect of the privity of their estates; So the entry of the Lessor or the Lord in the like cases in the names of the particular Tenants shall availe the same Tenants, in regard of Co. lib. 9. 106. a. *Margaret Podgers* case.

the priuity of their eſtates, and for the ſaluation of their temporal rights, without any requeſt precedent, or aſſent ſubſequent: for in thoſe caſes the Leſſor and the Lord purſue the title and claime, which they haue to the inheritance, by lawfull entry within the fiue yeares; according to the ſaying contained in the ſaid Act: Howbeit he that is a meere ſtranger, and hath no right, ſhall not by his entry within the 5 yeares in the name of him, that right hath, auoid ſuch a fine, vnleſſe he haue ſome requeſt or commandment precedent, or aſſent ſubſequent to authorize him to do it; becauſe the ſaid Act hath appropriated the puniſhment thereof, by way of action or lawfull entry, vnto him that right hath, either by intereſt, or priuity, or elſe by requeſt or Commandment precedent, or aſſent ſubſequent, &c.

Co. l. 10.43.b. 4. *Jennings* caſe.

113 At the Common Law recouery againſt Tenant for life with Vouther vpon true warranty and recouery in value ſhall binde him in remainder (as the bookes are in 19 E. 3. Recouery in value 20. 43 E. 3. ibid. 13. 44. Aſſ. pl. 35. & 5 E. 4. 2.) And the reaſon hereof is, becauſe the particular eſtate and the eſtate in remainder (in reſpect of the priuity) make but one eſtate, and one warranty may extend to both, and therefore the recompence in value ſhall alſo enure to both. Recouery, againſt Tenant for life.

Co. l. 10.48.a. 3. in *Lampets* caſe.

114 Albeit the wiſedome and policy of the Sages of our Law hath prouided; that no poſſibility, right, title, or thing in action ſhall be granted or aſſigned to ſtrangers, to auoid multiplicity of ſuits; oppreſſion of the people (principally of the Tenants) and the ſubuerſion of the due and equall execution of Iuſtice; Neuertheleſſe all rights, titles, and actions by the prudence and policy of the Law, may be releaſed to the Tenant for the ſame reaſon of his repoſe and quiet, and for the auoidance of ſuits and contentions, and to the end euery one ſhould liue in his calling with peace and quietly: Now therefore a right or title to the Franke-tenement or Inheritance (be it in preſenti or futuro) may be releaſed in fiue manners; 1 To the Tenant of the Franke-tenement in Deed or in Law, without any priuity; 2 To him in remainder; 3 To him hath title of the reuerſion, without any priuity, but an eſtate cannot be enlarged without priuity; 4 To him that hath right, euen in reſpect of priuity; As if the Tenant be diſſeiſed, the Lord may releaſe his Seruices, in reſpect of the priuity and right, without any eſtate; 5 In reſpect of priuity onely, without right; As if Tenant in tail make Feoffment in fee, the Donee after the Feoffment hath not any right, and yet in reſpect of the priuity onely, the Donor may releaſe vnto him the rent and all ſeruices ſaving the fealty: So alſo the Mentenant in a precipe may releaſe to the Demandant, or to the Tenant after Feoffment, &c. Vide ſupra 44. Right and title may be releaſed, but not tranſferred.

Co. l. 10.92.a. 4.93.a.b. Doct. *Leyfields* caſe.

115 It is a Maxime in the Law, that when he, that is partie or priuy in eſtate or intereſt, or he, that iuſtifies in the right of him, who is party or priuy, is forced to plead a Deed, albeit he, that is priuy claimes but parcel of the originall eſtate, yet in that caſe he ought to ſhew the originall Deed to the Court; As if the King graunteth land to B. for life, B. demiſeth the ſame land to C. for yeares: Now, if C. be impleaded, he ought to produce in Court the Letters patents of the demiſe granted to B. becauſe B. and C. are priuies in eſtate. Vide William Poles caſe (3 H. 6. 20, 21, & 22.) wherein was in effect this; A. by indenture enfeoffes B. of the Mannor of Dale reſerving vnto A. and his heires 5 marks rent per annum, with clauſe of diſtreſſe; B. grants to C. for life xxvi s. viii. d. per annum, parcell of the ſame rent, who being firſt ſeiſed and then diſſeiſed, vſeing an Action of the ſaid parcell granted to him, and becauſe in the ſame Action he produced not the originall indenture of the reſeruation of the whole rent vnto his Grantor, Iudgement was given againſt him, albeit by reaſon that paſ- Releaſe, &c. implyeth (where there is priuity) without ſhewing it.

parcel of the ſame rent, and the reaſon thereof was in regard William Pole the plaintiffe was privy in the eſtate of the rent, and claimed by the firſt grant. And in the caſe above put, the reaſon holds againſt the Stranger, in regard the Leſſee might have bound the Leſſor by Covenant to have ſhewen forth the Deed, when occaſion ſhould have required. An 35 H. 6. it was agreed, that Guardian in Chivalry ſhall not plead a releaſe made to his Tenant without ſhewing it forth: So in 14 H. 8. 4. It was agreed by all, that he, who is privy in eſtate, as Feoffee, Leſſee for years, &c. or that juſtifies, as ſervant to him, that is privy, ought to ſhew the Deed to the Court, which they plead, &c. Alſo in Debt againſt the heir, he ſhall not plead a releaſe made to the Executors without ſhewing it; for there is privity betwixt them: and with this agrees the 13 E. 2. Monſtrans des faits 42. Howbeit on the other ſide, where a man is a ſtranger to the Deed, and claimeth not the thing comprized in the grant, nor any thing out of it, nor doth any thing in right of the Grantee, as Bailife or Servant, there he ſhall plead the Patent or Deed without ſhewing it: If the Tenant pleas the grant of the Lord with attornment, he ſhall not ſhew it, & ſic de ſimilibus: But when he that claimes the thing, or any right or intereſt out of it, or juſtifies in right of the Grantee; there he ought to ſhew the firſt grant; as the ſecond Grantee of a rent charge ſhall ſhew the firſt grant, and ſo ſhall his Bailife; and the Grantee of a rent charge ſhall not plead the releaſe of the Diſſeiſee to the Diſſeiſor without ſhewing it; for albeit he claime not the land of which the releaſe is made, yet he, that hath rent out of land, hath alſo right in the land, which by a releaſe of all his right ſhall be extinct, and therefore in ſuch caſe he ought to pronounce the Deed: And with this agrees the 20 H. 7. 6. & 14 H. 8. 5. The Diſſeiſee ſhall not plead a releaſe to the Diſſeiſee, neither of right in the land, nor of rent ſtanding out of the land, without ſhewing it; for, where one claims the thing, unto which the releaſe is made, or right or intereſt out of it, the Law creates a privity in reſpect of his eſtate or right in the thing, viz. to this intent, that he ſhall not have benefit of the Deed without ſhewing it. Co. lib. 34. 1.

116 If an eſtate of land be granted, without impeachment of waſt, that privilege is individually annexed unto that eſtate (3 E. 3. 44. per Shard and Stone.) If one, that hath a particular eſtate without impeachment of waſt, change his eſtate, he loſeth that advantage (5 H. 5. 9. a.) If a man make a Leaſe for years without impeachment of waſt, and after he confirmes the land to him for his life, he ſhall be afterwards chargeable for waſt (28 H. 8. Dyer 30. b.) If a Leaſe be made to one pur auter vie without impeachment of waſt, the remainder to him for terme of his own life; here, he is puniſhable of waſt; for the firſt is ſtaid drowned and gone; and ſo it holds of a Confirmation. The heir at the Common Law ſhall have prohibition of waſt againſt the Tenant in Dower; but if the heir grant over the reverſion, his Grantee ſhall not have prohibition of waſt; For it appears in the Regiſter fol. 72 that ſuch an Aſſignee in an action of waſt againſt Tenant in Dower ſhall recite the Statute of Glocester; and therefore he ſhall not have prohibition of waſt at the Common Law; for then he ſhould not recite the Statute. Vide F. N. B. 55. 14 H. 4. 3. 5 H. 7. 17. b. & ſupra 1 & 4. Co. l. 11. 83. b. 3. *Lewis Bowles* caſe.

117 If tenant be vouched and enter into warranty and leaveth, he may have a Writ of Error, and ſhall aſſigne the errors, which happened betweene the Demandant and the Tenant, or betweene the Demandant and himſelfe as Vouchee: And ſo he in reverſion, that prays to be received for default of the Tenant for life, or for his faint pleading; F. N. B. 21. c.

ing, if he be recovered and plead and lose, he shall have a Writ of Error, and shall assigne the error that happened between the Demandant and Tenant, or between the Demandant and himselfe, that is prayed to be received: So also if Tenant for life lose by default, he in the reversion shall have a Writ of Error, albeit he neither was received, nor prayed to be received; And he shall assigne for error any matter, that happened between the Demandant and Tenant, that so lost by default: And all this is in respect of the privity and interest, which the Vouchee and Reversioner had in the land so recovered by the Judgement.

F. N. B. 21. l. m. & n. 118 In a plea of land against the Tenant, if the Tenant die, he that is heir to the Tenant for that land, shall have a Writ of Error, and not he that is heir at the Common Law; as in Borough English, if the Tenant lose the land by erroneous Judgement; the youngest sonne shall have the Writ of Error; and so shall he that is heire in speciall tail; And this in respect of the speciall privity and interest, which they have in the land: And for the same reason it is, that in case land be lost by erroneous Judgement, the Tenant may have a Writ of Error, and so also may the Vouchee have another Writ of Error upon one and the same Judgement; and so may the Tenant, and the Tenant by receit, and all at one time hanging. Executors also or Administrators shall have a Writ of Error upon a Judgement given against their Testator for debt or damages: So likewise the heir shall have a Writ of Error to reverse an out-lawry of Felony pronounced against his father, to restore him to the privity of bloud between his father and him. F.N.B.a.22.b. The Successor of an Abbot, Prior, Parson or such like bodies politique, shall have a Writ of Error upon a Judgement, given against their Predecessor, of all things, which touch the Succession or Corporation; but if a man recover against a Parson, Bishop, or the like, debt or damages, by judgement or action personal, their Executors shall have a Writ of Error upon such Judgement, and not their Successors; because their Executors or Administrators have interest in such things, and not the Corporation, &c. If a man sue execution erroniously against the recognisor upon a recognisance, the heire of the recognisor shall have a Writ of Error, &c.

Who may bring a Error.

F. N. B. 22. c. 119 In a præcipe quod reddat of land, if the Tenant disclaime, whereby the Demandant recovers, in that case the Tenant shall not have a Writ of Error, against his owne Disclaimer; because by that plea he hath waved all the privity and interest, that he had in the land; but if the Tenant onely plead non-tenure, and thereupon it is found against him, so that the Demandant recovers, in that case the Tenant shall have a writ of Error, &c.

No privity upon a disclaime.

F.N.B. 98.q.r. 120 If a man lose land by default in a præcipe quod reddat, and die, the heir shall have an action of deceit as well as the father, and shall have restitution; for he is privy in bloud: So likewise, if a man have execution by default upon a recognisance in a Scire facias sued against one, and that Defendant die; his Executors shall have a Writ of deceit, and shall be restored, for they are privies in right, &c.

Heir and Executor privie

F.N.B. 108.a. 121 The Vouchee, or Tenant by receit, or he in the reversion, (where he joyns to the Tenant for terme of life by aid prayer), shall have an attaint, if they lose by false verdict: And if the Tenant for life lose by false verdict, he in the reversion shall have an attaint or Writ of Error, during the Tenant for life; but this is by the Statute of 9 R. 2. cap. 3.

Reversion shall have taint or Er

F.N.B. 108.b. 122 In trespasse, if the Defendant plead villanage in the Plaintife, and he saith that he is free, and he is found free by false verdict, &c. and after the Defendant dies, here his heir shall have an attaint to avoid

Attaint by heir in villanage.

vous this Estoppel, and take voide, albeit it was given in Maca personal. Sed quære de hoc.

k of Covenant by Assignee.

123 Fitz-Herbert saith, the second Lessee shall have a Writ of Covenant against the Lessor, if the Lease be made to him and his Assignes with warranty: And yet he saith afterwards, the Assignee of the Lessee shall maintaine a Writ of Covenant against the Lessor; albeit in the Deed of Covenant there is no mention of any Assignee. Ideo quære de hoc. F.N.B. 145. m. & 146. c.

cutor by.

124 At the Common Law if Lands had been willed to be sold by Executors, or had been devised to Executors to be sold, if any of them had refused, the rest could not have sold them; but now that is holpen by the Statute of 21 H.8. cap. 4. viz. the first by the expresse words of that Statute, and the other by the equity of the same: Howbeit in neither of those cases, when one refuseth, can the other make sale to him that so refuseth; because he is party and privy to the last Will, and remains Executor still. Co. Inst. pars 1. 113. a. 3.

The heir sued shall not have contribution.

125 If a man seised of 3 acres of land acknowledge a recognisance or Statute, &c. and enfeoffe A. of one acre, and B. of another acre, and dies; so that the third descends to his heir: In this case, if execution be sued onely against the heir, he shall not have contribution, no more than the father should have had, if he had been living; for they are privies in bloud; And therefore it is said, that the heir sits in the seat of the Ancestor, Et hæres est alter ipse; filius est pars patris; mortuus est pater, sed quasi non est mortuus, quia reliquit similem sibi, &c. Co. l. 3. 12. b. 2. Sir *William Herberts* case.

Release of Dower.

126 The Baron makes a Lease for life, and dieth, a release made by the wife of her Dower to him in the reversion is good; Albeit she hath no cause of action against him in præsenti. And this is because of the privity of estate, that is between the Tenant in Dower, and him in the reversion, &c. Co. Inst. pars 1. 265. a. 3.

The privity of Executors for wardship.

127 Where the Statute of West. 1. cap. 22. giveth unto the Lord two years of the heir female after her age of 14, thereby is implied, that if the Lord dieth within the two years, yet his Executors or Administrators (although not named) shall also enjoy the same; for, when the Statute so vesteth an Interest in the Lord, the Law giveth the same unto his Executors or Administrators, because they are privies unto him in representation. Then put case, that the Lord hath the wardship of the body and land of an heir female, and maketh his Executor, and dieth before her age of fourteen years, whether the Executor shall in that case have the two years, because the Executor is not Lord, nor named in the Statute: And (in this case) my Lord Coke takes it, that the Executor, having the wardship of the body and land, shall also have the two years, for that they were vested in the Lord, and in respect of the privity, as aforesaid. Co. li. 79. a. 2.

e privity of cutors.

128 Executors and Administrators might take benefit of the generall pardon in 43 El. and might plead it, as well as the Testator himselfe. So 3 Eliz. Dyer, 201 upon the Statute of 23 H. 8. Executors shall have an Attaint. 6 E. 6. Bendloes, Executors shall have restitution upon the Statute of 21 H. 8. Also Administrators shall have a Writ of Error upon the 27 Eliz. as it was adjudged in 36 Eliz. in the Lord Mordants case in the Exchequer Chamber; yet these three last Statutes speak onely of the parties, and not of his Executors or Administrators. Vide 28 Ass. Pl. 7. 11 E. 3. Executors 77. Co. l. 6. 79. b. in Sir *Edward Phittons* case.

husband ll not have s in acti-

129 Marriage is an absolute gift of all Chattels personal to the husband, and also a gift of all Chattels real sub modo, which the Feme hath in possession and in her own right (for which see R. 93. Ex. 5.) but Chattels real or personall, consisting meerly in action the husband shall not have by the intermarriage, unlesse he recover them in the life of the wife, albeit Co. Inst. pars 1. 351.

albeit he ſurvive her; As a writ of right of Ward, a Valore maritagii, a forfeiture of marriage, arrerages of rent, a preſentation to a Benefice, debts by obligation, contract, or otherwiſe, which did accrue to the wife before marriage: the husband (I ſay) ſhall not have theſe or the like, unleſſe he and his wife recover them, becauſe they conſiſt in privity; and therefore albeit the husband ſurvive the wife, yet he ſhall not have them, but the Executors or Adminiſtrators of the wife: So if a Feme Sole be poſſeſt of a Chattel real, and be thereof diſpoſſeſt, and then taketh husband, and dieth, albeit the husband ſurvive, yet this right is not given to the husband by the intermarriage, but the Executors, &c. of the wife ſhall have it: So it is likewiſe, where the wife hath but a poſſibility, and of Reliefs, &c. Howbeit now by the Statute of 32 H. 8. cap. 37. if the husband ſurvive the wife, he ſhall have the arrerages as well incurred before the marriage, as after, &c.

Co. Inſt. pars 1. 169. a. 3. 130 Between Joyntenants there is a two-fold privity, viz. in eſtate, and in poſſeſſion; between Tenants in common, there is privity onely in poſſeſſion, and not in eſtate; but parceners have a three-fold privity, viz. in eſtate, in perſon, and in poſſeſſion. Privity of parceners.

Co. Inſt. pars 1 208. b. 3. 131 There is a diverſity, where a condition concerneth a tranſitory or local act, and is to be performed to the Feoffée or Obligée, and where it is to be performed to a ſtranger; as if A. be bound to B. to pay 10 l. to C. Here A. tenders to C. and he refuſeth; In this caſe the Bond is forfeit, becauſe there is no privity betwixt them, and A. cannot compel C. to receive it, but if it were to be paid to the Obligée, upon tender and refuſal the bond is ſaved, by reaſon of the privity betwixt them. Tender of money to a ſtranger.

Co. ib. 209 a. 2. 132 If a man be bound to A. in an Obligation with condition to enfeoff B. (who is a meer ſtranger) before a day, the Obligor doth offer to enfeoff B. and he refuſeth: Here the obligation is forfeit, for the Obligor hath undertaken to enfeoff B. and there wants privity betwixt him and B. But if the feoffment had been to be made to the Obligée himſelf, or to any other for his behoof, a tender and refuſal ſhall ſave the Bond, becauſe of the privity betwixt them: So likewiſe if A. be bound to B. with condition that C. ſhall enfeoff B. In this caſe, if C. tender, and D. refuſe, the obligation is ſaved; for it ſhall be intended that the feoffment ſhould be made for the benefit of the Obligee, which implies privity. The like.

Co. ib. 245. a. 4. 133 A ſtrangers entry (of his own head) upon the Baſtard eigne to the uſe of the Mulier, is not good without the Muliers conſent thereunto afterwards; Howbeit, the entry of the Guardian in ſoccage or chivalry (of their own heads) without the Muliers aſſent, is good to avoyd the title of the Baſtard eigne, becauſe of the privity, for they are no ſtrangers. Baſtard & Mulier entry.

Dyer 29. a. 194 28 H. 8. 134 Tenants in Common cannot make partition without deed, but Coparceners may, becauſe they are privies, and as one heir, and (by conſequent) have a three-fold privity, viz. in eſtate, perſon, and poſſeſſion. Vide ſuprà 130. Partition.

135 Vide Max. 114. c. 58. & Hob. 130. Oates and Frith.

56 Equal things cannot drown one another, *& contrà.*

Co. Inſt. pars 1 273. b. 3. 1 If a man make a leaſe for ten years, the remainder for 20 years, he in the remainder releaſeth all his right to the Leſſee for ten years; In this caſe, the Leſſee for ten years hath an eſtate for 30 years; for one chattel cannot drown another, neither yet can yeares be conſumed in yeares. A releaſe of Leſſee for years to Leſſee for years.

Estate taile cannot drown, nor be extinct.

2 If a gift be made to the eldeſt ſon, and to the heirs of his body, the remainder to the father, and to the heirs of his body; the father dieth, the eldeſt ſon levieth a fine with proclamations, and dieth without iſſue, this ſhall barre the ſecond ſon; becauſe the father, while the remainder was in him, might by levying a fine have barred the youngeſt ſon of taking any benefit by it; and therefore, when the remainder deſcends to the eldeſt ſon, a fine levyed by him ſhall alſo be of like force to bar the youngeſt; for that an eſtate taile can neither drown, nor be extinct; becauſe ſuch an eſtate was Fee-ſimple at the Common Law, and may by poſſibility endure for ever. Co. lib. 3. 72. a. 4. Co. l. 2. 61. a. in *Wiſcots* caſe.

Leaſe for life may uphold a leaſe for years

3 If a man letteth lands to another for life, the remainder to him for 21 years, he hath both eſtates in him ſo diſtinctly, as he may grant away either of them; for a greater eſtate may uphold a leſſe in the ſame perſon, but not è converſo; and therefore if a man make a leaſe to one for 21 years, the remainder to him for term of his life, the leaſe for years is drowned, &c. Co. Inſt. pars 1. 54. b. 4.

Obligation annuls a contract, and a Judgment a bond.

4 A Statute Staple or obligation in nature thereof, is but an obligation recorded, and an obligation, be it of record, or not of record, cannot drown another obligation: but if a man hath a debt by ſimple contract, and he takes an obligation for the ſame debt, or any part thereof, the contract is determined (3 H. 4. 17. 11 H. 4. 9 E. 3. 50, 51.) So when a man hath a debt upon an obligation, and by ordinary courſe of Law hath Judgement thereupon, the contract by ſpecialty, which is of a meaner nature, is by Judgement of Law drowned and changed into a matter of record, which is of an higher nature, &c. Vide 61. 7, 8. Co. l. 6. 45. in *Higgins* caſe.

Extinguiſhment of a Seigniory.

5 If the Lord be Guardian of the land, or if the Tenant maketh a leaſe to the Lord for years; or if the Lord be Tenant thereof by Statute Merchant, Statute Staple, or Elegit, and maketh a feoffment in fee of the land to a ſtranger, he doth hereby extinguiſh his Seigniory; becauſe by his own act he hath veſted the Seigniory and Tenancy into one hand, by which means the tenancy is drowned, which before was but in ſuſpence: So if there be Lord and Tenant by fealty and rent, and the Lord diſſeiſe the Tenant of the land, and make feoffment in fee to another, hereby the Seigniory is extinct. Co. Inſt. pars 1 367. a. 3. Co. l. 6. 70. a. 3. in Sir *Moyle Finches* caſe.

Where joyntenancy may be merged, and where not.

6 If a man make an eſtate to three, and to the heirs of one of them, there the one of them hath Fee-ſimple, & yet the Joynture continues: for it is all but one eſtate created at the ſame time, and therefore the Fee-ſimple cannot merge the Joynture, which took effect with the creation of the remainder in fee; but when 3 are Joyntenants for life, and after one of them purchaſeth the fee, or the fee deſcends upon him, there the Fee-ſimple merged the eſtate for life, and ſevereth the joynture; for the eſtate for life was in eſſe before, and may be merged or ſurrendred, but ſo cannot the eſtate for life in the firſt caſe, &c. Vide Pl. ibid. Co. l. 2. 61. a. in *Wiſcots* caſe.

Tenure extinct.

7 Land was held of the Archbiſhoprick by Knight-ſervice, and in the time of E. 3. this land was given by fine to one Strangways in taile, the remainder in fee to E. 3. the tenant in taile dies, his iſſue within age: In this caſe (by Sanders and others) if the King will accept of the remainder, the iſſue ſhall hold of none, nor be in ward to any; becauſe the tenure and ſervice are gone and extinct by the Kings Fee-ſimple. Dyer 154. 18. 4. 5 P. M.

Duchy of Lancaſter.

8 After the Duchy of Lancaſter came into the Kings hands, albeit the revenus were kept ſeveral, yet per nomen Regis nomen Ducis dimergibatur; for he could not be Soveraign and Subject too. Vide 3 H. 6. Dyer 209. 22. 3 Eliz.

57 Things are to be conſtrued, *Secundum æqualitatem rationis.*

Finch 20. Bract. l.1.c.3.

1 This Rule in Law imports a logical vertue, a kind of equity, as Bracton calleth it, where he ſaith, Æquitas eſt rerum convenientia, quæ paribus in cauſis paria jura deſiderat, & omnia bene coæquiparat. Et dicitur æquitas, quaſi æqualitas: whoſe nature is to amplifie, inlarge, and add to the letter of the Law.

27 Eliz. Co. l. 3. 13. Sir *will. Herberts* caſe. 11 H. 7. 12. b.

Equal in reſts requi qual cond tions.

2 Upon a recognizance acknowledged by the Anceſtor, or a judgement in an action of Debt given againſt him; If he die ſeiſed of two acres, whereof one is holden in Borough English; or having iſſue two daughters, which make partition; or if he die without iſſue, whereby part of his land deſcendeth to the heir of his fathers part, and part to the heire on the part of his mother: In all theſe caſes, if one onely be charged, he ſhall have contribution againſt the other; for they are in æquali jure. Finch 20. Co.l.2.25.b.4. The caſe of Banker.

26 Aſſ. Pl. 37.

Equal extet

3 If two, four, or more men being ſeverally ſeiſed of lands, joyn in a recognizance, all their land muſt be equally extended. Finch 20.

Finch, ibid.

Expoſition Statutes.

4 This Rule doth chiefly ſhine and ſhew forth it ſelf in the expoſition of Statutes, by extending things there provided to miſchiefs in the like degrees, &c.

Finch, ibid.

Grounds of Law.

5 This Rule is alſo of great uſe for guiding the grounds and maximes of things, which newly ſtart up, according to the rule of the Common Law.

23 H. 8. Fitz.

Uſes regarde as eſtates.

6 Uſes at the Common Law were nothing, yet in time gaining greater regard to be imputed amongſt Inheritances, are now demeaned as other Inheritances at the Common Law; ſo as poſſeſſio fratris ſhall be of them, & of lands in Borough Engliſh, the uſe ſhall deſcend to the youngeſt ſon: And now alſo theſe uſes being turned into eſtates, ſhall be demeaned in all reſpects, as eſtates in poſſeſſion. Finch 20.

Co. l. 4. 22.

Copihold as Freehold.

7 When cuſtome createth Inheritance in Copy-hold lands, and maketh the lands deſcendable, then ſhall the Law direct the deſcents according to the Maximes and rules of the Common Law, to have a poſſeſſio fratris, and the like: But not to collateral things, as tenancy by the Courteſie, Dower, deſcent to toll an entry. Finch 20.

Co. Inſtitut. 1. 24. b. 2.

Equity, a con ſtruction mad by the Judge

8 Equitie is a conſtruction made by the Judges, that caſes out of the letter of a Statute, yet being within the ſame miſchief, or cauſe of making the ſame, ſhall be within the ſame remedie, that the Statute provideth: And the reaſon hereof is, for that the Law-maker could not poſſibly ſet down all caſes in expreſſe terms; Æquitas eſt convenientia rerum, quæ cuncta coæquiparat, & quæ in paribus rationibus paria jura deſiderat. And again, Æquitas eſt perfecta quædam ratio, quæ jus ſcriptum interpretatur & emendat, nulla ſcriptura comprehenſa, ſed ſolum in vera ratione conſiſtens. Æquitas eſt, quaſi æqualitas. Bonus judex ſecundum æquum & bonum judicat, & æquitatem ſtricto juri præfert. Et jus reſpicit æquitatem. And therefore the caſes ſet down in the Statute of Weſtm. 2. are there put onely for examples of eſtates taile, generall and ſpecial, and not to exclude other eſtates taile: For, Exempla illuſtrant, non reſtringunt legem. And this appears by the words of the ſame Stat. Amiſſont divers autres eſtates en le taile, &c. And herewith alſo agreeth Littleton §. 21. Carbonels caſe, 33 Ed. 3. Taile 53 E. 3. 32. 18 Aſſ. Pl. 5. 18 E. 3. 46. 1 Ma. Dy. 46. The Lord Barkleys caſe. Pl. Co. 251.

Co. ib. 14. a. 1.

Co. ib. 53. b. 3.

Waſt and d ſtruction co vertible.

9 Albeit the Statute of Gloceſter, which provideth remedy againſt waſt, ſpeaketh not of the exile of Villeins, yet that alſo is comprehended under the general word of waſte; ſo that exile or deſtruction of Villeins, & Tenants at will, or making them poor, where they were rich, when the tenant came in, whereby they depart from their tenures

is

is to be adjudged waſte; for waſte and deſtruction in their larger ſenſe are words convertible, &c.

10 A livery of lands out of the Kings hands is in the nature of a reſtitution, which is to be taken favourably; For if livery be made of a Manor cum pertinentiis, the heir ſhall thereby have an Advowſon appendant; Howbeit it is otherwiſe in grants by Letters Patents. Co. lib. 77. a. 4.

11 By the Statute of 2 E. 6. cap. 8. it is enacted, That ſuch perſons as hold for term of years, or by copie of Court-roll, or have any rent, common, or profit apprender out of any lands found in any office, whereby the King is entitled to the wardſhip of the ſame lands, or to the forfeiture of lands upon attainder of treaſon, felony, præmunire, or any other offence, may have, hold, enjoy, and perceive their ſeveral eſtates, intereſts, and profits, although they be not found in the office; Here, albeit thoſe two eſtates onely are ſaved by the letter of the ſaid Act; Yet it being a beneficial Law, the eſtate of Tenant by Statute Staple, Marchant, Elegit, and of Executors, that hold lands for payment of debts, &c. are taken to be within the benefit of that clauſe: which was doubted in 14 El. Dyer 319. Co. lib. 77. b. 2.

12 Where an office is found by theſe words or the like, quod de quo, vel de quibus tenementa prædicta tenentur, juratores prædicti ignorant, or that the lands are holden of the King, ſed per quæ ſervitia juratores ignorant, neither of theſe ſhall be taken for an immediate tenure of the King in chief; but in ſuch caſes a melius inquirendum ſhall be awarded, as hath been accuſtomed of old time: And this proviſion is made by the Statute of 2 E. 6. cap. 8. And here, albeit that Statute ſaith no more; yet (by the equity of the ſame Statute) if the firſt office find a tenure for the King per quæ ſervitia, &c. and upon the Melius the tenure is found for a Subject; In that caſe, the firſt office hath loſt his force, and need not to be traverſed; and the Melius is in the nature of a Diem clauſit extremum, or a Mandamus, &c. And this was but a declaration of the ancient Common Law, as by theſe words of the ſame Statute (as hath been accuſtomed of old, &c.) it appeareth; but if upon the Melius it be found again as uncertainly, as before is ſaid, then it is in judgement of Law a tenure in Capite; Howbeit if upon the Melius a tenure be found for the King, Ut de manerio, &c. ſed per quæ ſervitia, &c. it ſhall be taken for Knight-ſervice. Co. lib. 77. b. 3.

13 At or before the Statute of Magna carta, cap. 2. All Earldoms and Baronies were derived from the Crown, and were holden of the King in Capite, and the King would not then ſuffer them to be divided, or ſevered: Any ſuch intire Earldoms and Baronies are within that Statute to pay relief according to the limitation thereof: Howbeit at this day Earls and Barons are without ſuch Earldoms and Baronies of the Kings gift in chief; For at the creation of an Earl, he hath ſometimes an Annuity granted unto him, and ſometimes nothing at all, but rather giveth ſomewhat for his Honour; So as ſuch Earls and Barons ſo created are clerely out of the Statute of Magna Carta, and are to pay ſuch reliefs as other men, that hold of the King in Capite: For as the heir of a Knight ſhall not pay 100 s. relief, unleſſe he hath a Knights fee, &c. ſo neither the Earl nor Baron ſhall pay any relief by that Statute, unleſſe he hath an Earldom or Barony intended by the ſame Statute, &c. Co. Inſt. part 1. 83. b. 3.

14 By the Statute of 21 H. 8. cap. 4. it is provided, that where lands are willed to be ſold by Executors, though part of them refuſe, yet the reſidue may ſell: And here, albeit the letter of the Law extendeth onely where Executors have a power to ſell; yet being a beneficial law, it is by conſtruction extended alſo where lands are deviſed to Executors to be ſold. Co. lib. 113. a. 5.

Co.lib.143.a.4 Litt. Sect. 216.

15 The Law so regardeth equity and equality, that it will in divers cases work according to them without any provision or declaration of the party: And therefore, if before the Statute of Quia emptores terrarum, a man had made a feoffment in fee, reserving rent to him and his heirs, this was Rent-service, for which he might distrain of common right; And if he had made no reservation at all of any rent or service; yet the Feoffee should then have holden of the Feoffor by such service, as the Feoffor held over of his Lord next paramount: For, the Law in this case did create a tenure. Tenure of land.

Litt. Sect. 222. Co.lib.148.b.3.

16 If a man seised of divers lands, of tenure in Fee-simple, and of the rest in tail, make a gift in tail, or a lease for life, or years of all, reserving a rent, and die; there, if the issue in tail avoyd the gift or lease, as to the entailed lands, the rent shall be apportioned; for, seeing the rent is reserved out of, and for the whole land; it is reason, that when part thereof is evicted by an elder title, that the Donee or Lessee should not be charged with the whole rent, but that it should be apportioned rateably according to the value of the land. Rent-service apportionable.

Co.lib.154.a.1.

17 By the Statute of 7 R. 2. cap. 10. it is enacted, that an Assise of rents arising forth of lands in divers Counties shall be taken in Comitatu comitatus, which seems to be meant onely of Counties that border one upon another. Nevertheless, albeit the Counties do not joyn, but have twenty Counties lying between them; yet the assise in Comitatu comitatus doth lye, and the Justices shall sit between the said Counties: Also where the Statute seems to speak of two Counties onely, the like Law is, when the rent issueth out of lands lying in more Counties than two. Equity upon 7 R. 2. [illegible]

Co. ibid. a. 3.

18 The Statute of Merton, cap. 2. (made 20 H. 3.) which gives the writ of Redisseisin, is as followeth: Item si quis fuerit disseisitus de libero tenemento & coram Justiciariis Itinerantibus sessinam suam recuperaverit per Assisam novæ disseisinæ, vel per recognitionem eorum, qui fecerint illi sinam, & ipse disseisitus per Vicecomitem sessinam suam habuerit, si iidem disseisitores postea post hoc Justiciariorum, vel alium de eodem tenemento iterum eundem contra pacem disseisiverint, & inde convicti fuerint, tarde capiantur, &c. Here, albeit this Statute seems to intend onely lands and tenements, yet Littleton, §. 233. expounds it to extend also to a Rent-charge, or a Rent-seck; For although they are against common right, yet a man may have a Free-hold in them; And therefore if a man grant omnia tenementa sua, a Rent-charge or a Rent-seek will also pass thereby: Also by the same Statute the Assise seems to be limited to be taken onely coram Justiciariis Itinerantibus; notwithstanding Littleton (there) speaketh generally, and so is the Statute to be intended, viz. before any other Judges, that have authority to take Assises, and Justices Itinerant are onely for brevity there for an example: And albeit that Statute saith, Recuperavit per Assisam, &c. by the verdict of the Assise, as Littleton in the same Chapter expoundeth it; or per recognitionem, &c. by confession; yet if the recovery be upon a demurrer, or by pleading of a receyt and failer of it, or by any other manner, such recoveries are also within the equity of the same Statute: And therefore Littleton in the above-said Section speaketh generally, Et recovera le seisin del rent, intimating, that it ought to be understood of all manner of recoveries in an Assise of Novel disseisin: Also in that manner is the above-said Statute confirmed by Westm. 2. cap. 26. Also here it is worthy observation, that this Statute is expounded by equity, notwithstanding it is a penal Law; for by the said Statute of Westminster 2. double damages is given upon the recovery. Rent-seck charge. Westm. 2. by equity though

Co.lib.174.a.3. Co.l.4.121.b.4 *Bastards* case.

19 There is a diversity between a recovery in value by force of a warranty upon an exchange, and upon a partition; for upon an exchange, Exchange Partition Recovery

change, he that loseth, shall recover a full recompence for all, that he so loseth: But upon a partition, the parcener that loseth shall onely recover the moity or part of that wherein is lost; to the end that the losse may be equal. 48.

of 32 32. 20 The Tenant by the Courtesie shall have a writ of Partition upon the Statute of 32 H. 8. cap. 32. as well as Jointenant or Tenant in common for life or years; For albeit he is neither Jointenant nor Tenant in common (because a præcipe lyeth against the Parcener or Tenant by the Courtesie) yet forasmuch as he is in equall mischiefe as another Tenant for life, he shall be intended within the equity of that Statute. Co. lib. 175. a. 4.

sion of ls. chpot. 21 If a man seised of lands in fee, hath issue two daughters, and gives part of them to one of his daughters in Frankmarriage, and dies; In this case, albeit the lands untilled or exceed in value the other lands, given in Frankmarriage, yet shall not the Donee in Frankmarriage have any part thereof, unlesse she will put her part in Hotchpot with the other lands, and then they shall be equally divided between the sisters. And it seemeth by our old books, that by the ancient Law there was also a kind of resemblance hereof concerning goods; Si autem post debita deducta, & post deductionem expensarum, quæ necessariæ erunt, id totum, quod tunc superfuerit, dividatur in tres partes, quorum una pars relinquatur pueris, si pueros habuerit defunctus; secunda uxori, si superstes fuerit; Et de tertia parte habeat testator liberam disponendi facultatem, si autem liberos non habeat, tunc medietas defuncto, & alia medietas uxori; Si autem sine uxore decesserit, liberis existentibus, tunc medietas defuncto, & alia medietas liberis tribuatur; Si autem sine uxore & liberis, tunc id totum defuncto remanebit. And by the Law before the Conquest it was thus provided; Sive quis in curia, sive morte repentine fuerit intestatus mortuus, Dominus tamen nullam rerum suarum partem (præter eam, quæ jure debetur) herioti nomine sibi assumito; verum eas judicio suo uxori, liberis, & cognatione proximis, juste pro suo cuique jure distribuito. Litt. Sect. 267. Co. lib. 176. b. 3 Glanvil, l. 7. cap. 5. Lambert, 119. 68.

riage. chpot. 22 If a man seised of 30 acres of land, each acre of equal value, hath issue two daughters, and gives 15 acres to one of them in Frankmarriage, and dies seised of the other 15 acres; In this case, the other sister shall have the 15 acres to her owne use, and the Baron and Feme shall not put their 15 acres in Hotchpot with them, because the parts are already equal: but this is to be thus understood, if they are of equal value at the time when the Partition should be made: For, if the land given in Frankmarriage, be by the act of God decayed in value, or if the remnant of the lands in Fee simple be improved after the gift, they may be cast into Hotchpot: And the Law will advantage of the value, as it is at the time of the Partition, unlesse it be by the proper act or default of the parties, &c. And it seemeth to some, that in case they be of equal value at the time of the partition, that then the reversion in fee of the lands given in Frankmarriage shall onely descend to the Donee, for otherwise the other sister shall have more benefit than the Donee; and so their parts would not be equal; and then their parts might be put into Hotchpot, notwithstanding the 30 acres are all of equal value at the time of the partition, which is against the reason that Littleton gives, Sect. 273, &c. Litt. §. 273. Co. Inst. pars 1. 179. a. 1.

ver of nants. 23 If there be two Joyntenants in fee, and the one letteth his part to another for the life of the Lessor, and the Lessor dieth; some say, that his part shall survive to his companion; for that by his death the lease was determined: Howbeit others hold the contrary, and their reason is; First, because at the time of his death the joynture was severed, for so long as he lived the lease continued: And secondly, because notwithstanding the act of any one of the Joyntenants, there must be equal Co. lib. 193. a. 3.

equal benefit of ſurvivor, as to the Fee-hold; but here, if the other Joyntenant had firſt died, there had been no benefit of Survivor to the Leſſor without queſtion; becauſe at that time the joynture would have been ſeevered; And this laſt ſeems to be the opinion of Coke, for that he puts it laſt, according to his own rule, and the courſe which he obſerves Littleton to uſe.

Co.ib.341.b.4. 24 A Biſhop, Abbot, Dean, Maſter of an Hoſpital, or any other ſuch body politique or corporate, which hath a ſole ſeiſin of lands in fee in right of their ſeveral Corporations, if any ſuch be ouſted, they ſhall (if need be) have a remedie agreeable to their right, viz. a Writ of Right, which is the higheſt remedy, for that they have the higheſt eſtate: It is otherwiſe of a Parſon; becauſe the intire fee and right is not in him; his higheſt writ being a Juris utrum, &c. Abbot, &c. Writ of R. Parſon a Juris utrum.

Co.ib.365.b.2. 25 Albeit the Statute of Gloceſter, cap. 3. (made in 6 E. 1. for the relief of the heir againſt the alienation of the Father, Tenant by the courteſie, with warranty, &c.) maketh one by mention of a Writ of Mortdanceſter, Coſenage, Aiel, and Beſaiel; yet a Writ of Right, a Formedon, a Writ of Entry ad communem legem, and all other like actions are within the purview of that Statute; for thoſe actions are but put for examples. Again, where it is ſaid in the ſame Statute (if the Tenant by the Courteſie alien) yet his releaſe with warranty to a Diſſeiſor, &c. is within the purview of that Statute, becauſe it is in equal miſchief; and if that evaſion might take place, that Stat. ſhould have been made in vain: So alſo if Tenant by y Courteſie be of a Seignior, and the tenancy eſcheat unto him, and after he alieneth with warranty, this ſhall not bind the iſſue, unleſſe aſſets deſcend; for it is in equal miſchief, &c. Alienation Tenant by courteſie barre.

Co.ib.313.a.2. & 11. 26 Albeit the preamble of the Statute of 34 H. 8. cap. 20. extendeth onely to gifts in tail made by the Kings of England before that Act (viz. hath given & granted, &c.) and the bodie of the Act referreth to the preamble (viz. that no ſuch feigned recovery hereafter to be had againſt ſuch tenant in taile, &c.) So as this word (ſuch) may ſeem to couple the bodie and the preamble together; Yet in this caſe (ſuch) ſhall be taken for ſuch in equal miſchief, or in like caſe; and by divers parts of the Act it appeareth, that the makers of the Act intended to extend it to future gifts, and ſo is the Law taken at this day without queſtion. Gifts of the King, 34 H. 20.

Litt.Sect.732. Co.ib.383.b.1. 27 Some do expound theſe words of the Stat. of Gloceſter, cap. 3. the heritage of his mother, to be the lands which the mother hath by deſcent: And that conſtruction is true; but that Stat. (by the authority of Littleton, Sect. 732.) extendeth alſo, where the mother hath it by purchaſe in Fee-ſimple; for ſo ſaith Littleton himſelf, that this word (Inheritance) is not onely intended, where a man hath lands by deſcent, but likewiſe where a man hath a Fee-ſimple by purchaſe; becauſe his heirs may inherit him: And albeit it be true, that the Statute extendeth to an eſtate in Frankmarriage acquired by purchaſe, yet doth it extend alſo to all eſtates in tail, as well by deſcent as by purchaſe, Frankmarriage being put there but onely for an example. Heritage in Gloc. 3. is heritance by purchaſe,

Litt. §.738. Co.ib.387.a.4. 28 If Tenant in Fee-ſimple, that hath a warranty for life, either by an expreſſe warranty, or by Dedi, be impleaded and vouch, he ſhall recover a Fee-ſimple in value, albeit his warranty were but for term of life; becauſe in that caſe the warranty was annexed, and did extend to the whole eſtate of the Feoffee in Fee-ſimple: But if Tenant in taile let the Tenements for life, the remainder to another in fee, and a collateral Anceſtor confirm the eſtate of the Tenant for life for the terme of his life onely with warranty, and die, and the Tenant in tail hath iſſue and die; Here, the iſſue is barred during the life of the Tenant for life by the Collateral warranty; And, in that caſe, if the Tenant for life be impleaded and vouch, he ſhall onely recover in value but an eſtate for life, Warranty life.

life; becauſe the warranty was annexed and both extend to that eſtate onely, &c.

eſtates together in ſame

29 If a man make a Charter of feoffment of an acre of land to A. and his heirs, and alſo another Deed of the ſame acre to A. and the heirs of his body, and deliver Seiſin according to the form and effect of both Deeds; In this caſe, he cannot take a Fee ſimple onely (as ſome hold; becauſe Livery was made according to the Deed in tail, as well as to the Charter in fee; neither can the livery enure onely to the Deed of eſtate tail with a Fee ſimple expectant; becauſe livery was made, as well upon the Deed in Fee ſimple, as the Deed in tail: And therefore others hold; that in this caſe, it ſhall enure by moities, viz. to have an eſtate tail in the one moity, with the Fee ſimple expectant; and a Fee ſimple in the other moity; And ſo the livery ſhall work immediately upon both Deeds: And this laſt ſeemes to be the opinion of Coke himſelfe; being put laſt, according to his own rule; which he often delivers in this part of his Inſtitutes. Co. lib. 2d. a. 2.

ner of ing intire.

30 Albeit of many Inheritances, that be intire, whereof no diviſion can be made by metes and bounds, a woman cannot be endowed of the thing it ſelfe, yet a woman ſhall be endowed thereof in a ſpecial and certaine manner: As of a Mill a woman ſhall not be endowed by metes and bounds, nor yet in common with the heir; but either ſhe may be endowed of the third toll-dish, or de integro molendino per quemlibet tertium menſem: And ſo of a Villain either the third dayes work, or every third week or moneth: A woman ſhall alſo be endowed of the third part of the profit of Stallage, of the third part of the profits of a Faire, of the third part of the profits of the Office of the Marſhalſie, of the keeping of a Park, of a Dove-houſe, of a Piſcary, viz. tertiam piſcem, vel jactum retis tertium; Of the third preſentation of an Advowſon. A Writ of Dower alſo lieth de tertiâ parte exituum proventientium de cuſtodia Gaolæ Abathiæ Weſtm. And herewith agreeth reverend antiquity. De nullo, quod eſt ſua natura indiviſibile, & ſecationem ſive diviſionem non patitur nullam partem habebit, ſed ſatisfaciat ei ad valentiam. Of the third part of the profits of Courts, Fines, Heriots, &c. Alſo a woman ſhall be endowed of tithes, and then her fureſt way is to take the third ſheaf; for what land ſhall be ſown is uncertaine. Co. Inſt. pars 1. 32. a.

ven recove- by parts.

31 Regularly the Feme ought to be endowed of an intire third part in ſeverality by metes and bounds; And yet if a man ſolely ſeiſed of lands in Fee, take a wife and enfeoffe eight perſons, and dies, a Writ of Dower is brought againſt thoſe eight perſons, and two conteſte the action, and the other ſix plead in barre, and ſaieth to that here, the Demandant ſhall have judgement to recover the third part of two parts of the land in eight parts to be divided; and after the time is found for the Demandant againſt the other ſix, the Demandant ſhall have alſo judgement to recover againſt them the third part of ſix parts of the ſame land, in eight parts to be divided. Co. lib. 3. a. b. f. Litt. §. 36.

dom of age equal.

32 If a man of the age of 14 years marry a woman of the age of ten, at her age of twelve he may as well diſagree, as ſhe may, albeit he were of the age of conſent; becauſe in the contracts of matrimonie, either both muſt be bound, or equall election of diſagreement given to both; and ſo è converſo, when the woman is of the age of conſent, and the man under. Co. lib. 79. b. 2.

very of ds by a rupt ood. 7.

33 Delivery of goods by the Bankrupt to a Creditor after the Commiſſion ſealed, according to the Statute of 13 Eliz. cap. 7. ſhall not be of force to avoid proportionable diſtribution of the ſame goods together with all the reſt unto the other Creditors, which are willing to ſubmit to the order of the Commiſſioners in that behalfe; for the Statute ſaith, that the diſtribution ſhall be, To every one of the Creditors, &c. rate and Co. l. 2. 25. b. 2. The caſe of Bankrupts.

rate

rate like, according to the quantity of his or their debt: So that one ſhall not prevent the reſt, but all may be in equali jure, according to that of Cato, Ipſæ etenim leges cupiunt, ut jure regantur.

Co. ibid. 35 H 8. tit. Teſtaments Br. 119.

34 A man holds three Mannors of three ſeveral Lords by Knight Service, each Mannor of equal value; here, he cannot deviſe two of the Mannors, and leave the third to deſcend according to the generalty of the words of the Statutes of the 32 and 34 H. 8. of Wills; For then he ſhould prejudice the other two Lords; but by a favourable and equal conſtruction of the ſaid Statutes, he hath power to deviſe onely two parts of each Mannor; So that equality amongſt them ſhall be obſerved. Deviſe of Mannors den by K Service.

4 E. 3. tit. Aſſ. 178 Co. ibid.

35 The Lord of a Mannor ſhall not approve it all, albeit he leave ſufficient Common in the lands of other Lords, according to the Statute of Merton. cap. 4. Approvem

Co. lib. 48. E. 3, 5.

36 In Dower, if the heir be vouched in three ſeveral Wards within the ſame County; execution ſhall be had againſt one onely; but all ſhall be equally charged. 29 E. 3. 39. there is the like caſe. Co. l. 3. 13. a. 3. Sir William Herberts caſe. Voucher i Dower.

Co. l. 3. 13. a. 4. in Sir *William Herberts* caſe. But it is Sir *John Lanfords* caſe. 29 E. 3. 50

37 Four men were bound in a Recogniſance of debt to A. and after one of the Conuſors dies, leaving his heir within age, the Conuſee brings a Scire facias againſt the three Survivours to have execution, who plead, that the heir of the Conuſor, who was dead, was within age, and in as much as during his minority, he could not be charged, and the Survivours ought not to be charged onely, they demand Judgement, &c. And becauſe A. could not gainſay it; the Court awarded, that the Parol ſhould ſtay; and this Judgement was afterwards confirmed in the Kings Bench by a writ of Error. A Recogni ſance by fo and one di

Co. ibid. b. 3.

38 If Judgement be given againſt two Diſſeiſors in an Aſſiſe for the land and damages and one of the Diſſeiſors die, the execution ſhall not be awarded againſt the ſurviving Diſſeiſor; that was party to the wrong, but the heir as well as the Diſſeiſor ſhall be equally charged 19 E. 3. tit. execution 81. Judgement gainſt two Diſſeiſors, a one dies.

Co. ibid. b. 4.

39 Albeit at the Common Law no land was ſubject to an execution for the debt of a Common perſon, but onely by force of certaine Statutes made for that purpoſe; yet the Judges and Sages of the Law have alwayes expounded generall Statutes of that nature according to the Rule of the Common Law (which is alwayes grounded upon the perfection of reaſon) and not according to any private and ſudden conceit and opinion: And therefore in as much as the ſaid Statutes have ſubjected a mans land to an execution for his debt, the Judges and Sages of the Law have conſidered the rule and reaſon of the Common Law in caſe of the heir of an Obligor; in which caſe the land was ſubject to an execution for debt by the Common Law: and accordingly do adjudge and reſolve the caſes, which ariſe upon the ſaid Statutes. Land not chargeable with debt.

Co. ib. 14. a. 1.

40 If two men alien land with warranty, the land of the one ſhall not be onely rendred in value; neither yet, if one of them die, the land of the Survivour ſhall be onely rendred in value; but the charge ſhall be laid equally upon them: For a Joynt bond that binds the land ſhall not ſurvive, or lie onely upon the Survivour; as in caſe of a joynt warranty, where two for them and their heirs warrant the land to another and his heirs, the Survivour ſhall not be ſolely vouched; neither yet may the Sheriffs deliver the land to the one or the other at his pleaſure; for in executions, which concerne the realty, and charge the land, the Sheriffe cannot make execution of the land to one onely; So alſo if two are bound to warranty, and both die, both the heirs Land equ charged.

heirs, ought to be vouched, and both of them ought to be equally charged.

quality of third part. ending ds in e) requi- a deviſe. 34 H. 8.

41 William Barnerds and his wife being ſeiſed of the Mannor of Hinton in tail, being the wifes joynture, and holden in Capite; And W. B. being alſo ſeiſed of lands in Fobing, both which amounted to the full third part of all his lands; And W. B. being likewiſe ſeiſed of the Mannor of Thoby (holden alſo in Capite) which amounted to two third parts, &c. W. B. deviſed to his wife the Mannor of Th. upon condition, that ſhe ſhould waive her former joynture, &c. W. B. dies, the wife in pais refuſeth her former joynture: In this caſe, W. B. could not by the Statutes of Wills (32 & 34 H. 8.) deviſe the whole Mannor of Thoby; becauſe the Mannor of H. and the lands in F. were not a third part of the cleer yearly value of all his lands, as they ought to be according to the proviſion of the ſaid Statutes; for that the cleer title and preſent poſſeſſion of the Mannor of H. was but in poſſibility, and depended meerly upon the will and pleaſure of the wife; and ſhe could not by a bare refuſal in pais deveſt her title to the joynture: But in that caſe, W. B. had onely power by theſe Statutes to deviſe two third parts of the Mannor of H. and alſo two third parts of the reſt of his lands; to the end that the King might have an equal and proportionable third part apparelled with like accidents and circumſtances, that the other two thirds parts were, according to the true intent and meaning of the ſame Statutes. Co. l. 3. 32. a. 4. *Butler* and *Bakers* caſe.

A fine for years within the Statute of 11 H. 7. 20.

42 If a Feme Tenant in taile accept a fine Sur conuſance de droit come ceo, &c. and thereby doth grant and render the land for 1000 years, pretending that this is not within the words of the Statute of 11 H. 7. cap. 20. which prohibits diſcontinuance, alienation, releaſe, &c. Yet that is alienation within the intention of the ſame act; becauſe within the ſame miſchiefe, &c. Co. l. 3. 51. b. 1. in Sir *George Browns* caſe.

Caſes within the Stat. of 27 H. 8. 10. though not within the letter of that Stat.

43 If a man make a feoffment to the uſe of himſelfe for his life, and after to the uſe of his wife for her life for the joynture of the wife, this eſtate in remainder is within the intent of the Statute of 27 H. 8. cap. 10. For albeit that Statute doth onely expreſſe theſe five forms, viz. 1 To the Baron and Feme, and to the heirs of the Baron; 2 To the Baron and Feme and to the heirs of their two bodies; 3 To the Baron and Feme, and to the heirs of the bodie of one of them; 4 To the Baron and Feme for their lives; 5 To the Baron and Feme for the life of the Feme: yet many other eſtates, not there particularly expreſſed, are within that act: for the ſaid particular forms are but put there for examples, and not to exclude any other eſtate, which is to the like effect, and accords with the intent of the makers of the ſame Act: So likewiſe an eſtate in Fee ſimple conveyed to the Feme for her joynture, and in ſatisfaction of her Dower is a joynture within the equity of the ſaid Act; for that is a competent livelyhood to the Feme of an eſtate of Frank-tenement, to take effect preſently after the death of the Baron for all the life of the Feme and more: And ſo it is reſolved in Sir Morrice Dennis caſe 8. Eliz. Dyer 248. And therefore the caſe of 6 E. 6. Dower Br. 69. (where it is ſaid, that an eſtate in Fee ſimple conveyed to the Feme for her joynture is not within the Stat. of 27 H. 8.) is miſreported, and ought to be intended that ſuch an eſtate is not within the Statute of 11 H. 7. cap. 20. which reſtraines the alienations of Femes, &c. Co. l. 4. 2. a. 2. *Vernons* caſe. Co. ibid. 3. b. 1. *per* Dyer in *Villiers* and *Beaumonts* caſe. 4 & 5. P. & M. 146.

ſubſequent ute may taken with- the equity.

44 It is frequent in our books, that an Act made of later time ſhall be taken within the equity of an Act made long before: So the Statute of Malbridge, which was made Anno 52 H. 3. gives the ward of the heir of the Tenant that holds by Knight Service, notwithſtanding a Co. ibid.

feoffment made by collusion, at which time, and for 200 years after and more, viz. until the Statute of 4 H. 7. cap. 17. (which gives the ward of the heir of Cestuy que use) the heir of Cestuy que use was not in ward; And yet it is holden in 27 H. 8. 9. if Cestuy que use since the Statute of 4 H. 7. make feoffment in fee by Collusion to defraud the Lord of his ward, that is taken within the equity of the said Statute of Malbridge: So also the Statute De donis condicionalibus made 13 E. 1. as to the warranty of the Tenant in tail with assets, is taken within the equity of the Statute of Gloucester cap. 3. made 6 E. 1. as it is held 11 E. 2. tit. garranty Stath. & 38 E. 3. 28. For a Formedon in descender was given in lieu of a Mordancester: Likewise the Statute of Westm. 2 cap. 25. made 13 E. 1. gives a Certificate, but it gives not adjournment; Albeit adjournment is taken by the equity of the Statute of Magna Carta cap. 12. made 9 H. 3. as it is held 12 H. 4. 9. So the Statute of 7 R. 2. cap. 10. gives an Assise for rent in continio Comitatus, and Recitall is also taken in case of rent by the equity of the Statute of Merton cap. 3. made 20 H. 3. Vide 1 E. 3. 25. b. So in Dyer 1 Eliz. 289. Pl. 60. The Bishop of London being one of the High Commissioners by force of the Statute of 1 Eliz. cap. 1. was translated to the Arch Bishoprick of Yorke, yet his authority (notwithstanding that preferment remaines by force of the Statute of 1 E. 6. cap. 7. So also, albeit lands were not devisable till the 32 H. 8. yet if a man devise lands to a woman for terme of her life, or in tail, &c. for her joynture, and in satisfaction of her Dower, that is a joynture within the Act of the 27 H. 8. For as an estate for life made to a Feme for her joynture before marriage, when she is not his wife, is within the equity of that Act, So an estate for life devised to a Feme for her life, which takes effect after his death when the marriage is dissolved, is also within the equity of the same Act; because such an estate stands well with the intent of the makers of the same Act of 27 H. 8. and likewise with the nature of the joynture intended thereby: And therefore if a man seised of certaine lands in fee holden in Soccage, and of other land in tail holden in Capite, devise by his Will in writing the third part of all his lands to his wife in recompence of her Dower, and dies, and the wife enter into the third part of the lands holden in Fee simple, that shall be a barre of her Dower by force of the said Act of 27 H. 8. It is otherwise, where a man deviseth land to his wife for terme of her life, &c. generally; for that cannot be averred to be for her joynture, &c. because a devise imports a consideration in it selfe, and unlesse it be plainly expresst in the will what it is for, it shall be taken onely as a benevolence; neither yet can any averment be taken out of the Will, unlesse it properly arise, or may be collected out of the words contained in the same Will, &c. Vide 51.

of a Statute made long before.

Co. ibid. 4. 4. & b.

Co. ibid. 5 El. Dyer 20. in the Court of Wards.

Co. ibid. 4. a. 3. M. 38. & 39 El. *inter Leak* and *Randal in Cur. Gardorum.*

45 Albeit the Statute of 36 E. 3. cap. 13. gives travers and Monstrance de droit from Lands seised into the Kings hands by offices returned onely into the Chancery; yet by equity of that Statute; if the offices be returned into the Exchequer, and not into the Chancery there also the Subject may put in his traverse, or Monstrance de droit: as appeares by a president in Qu. Eliz. time, between the said Queen and one Collins and Howstead.

Equity of the Stat. of 36 E. 3. 13.

Co. l. 4. 57. a. 3. in the case of the Sadlers, &c.

46 Although the Stat. of Westm. 2. cap. 18. which gives the Elegit, names onely the Sheriff to execute it; yet by equity of the same Stat. the Serjeant of the Mace in London, or any other immediate Officer to any of the Kings Courts of Record may execute the same Writ in their severall jurisdictions, &c.

Equity of the Stat of Elegit, W. 2. 18.

Co. l. 4. 65. a. 4. in *Fulwoods* case.

47 Albeit by the Stat. of the 1 E. 6. cap. 14. onely such estate (given to superstitious uses) as are to have continuance for ever, seem to be given

Equity of the Stat. of Superstitious uses. 1 E. 6. 14.

Co. l. 4. 106. b. 1. *Adams* and *Lamberts* case.

ven to the King; Yet other eſtates of leſſe continuance, as eſtates in tayle, for life, &c. imployed for ſuch uſes, are alſo given to the King, by the equity of the ſame Act: And the rather, becauſe Omne majus continet in ſe minus.

...ant in ...er ſhall ...t recover ...ording to ...r loſſe.

48 If a man be ſeiſed in fee or in tayle of three acres, each acre of equal value, and dies, the heir endowes the Feme of the third acre, and after the Feme is impleaded by one that hath title paramount, and ſhe voucheth the heir; Here ſhe ſhall not recover in value according to her loſſe, but onely the third part of two acres which remain; for by the Law ſhe ought to have but the third part of that which her husband might keep and enjoy by good title, &c. Vide plus, ib. Co. l. 4. 122. a. 2. in *Baſtards* caſe.

Diſcretion limited by reaſon. 23 H. 8. 5.

49 The Commiſſioners of Sewers upon the Statutes of 6 H. 6. cap. 5. & 23 H. 8. cap. 5. are not onely to charge thoſe that have lands adjoyning upon the Banks, Ditches, Gutters, &c. but likewiſe all others that are in any danger, or ſhall receive any profit by it, which is to be done in that particular; wherein the ſaid Commiſſioners have authority to proceed according to their diſcretion; which nevertheleſſe is to be limited and bounded with the rule of Law, and Reaſon: For diſcretion is a ſcience or underſtanding to diſcern betwixt falſhood and truth, betwixt wrong and right, betwixt ſhadows and ſubſtance, betwixt equity and colourable gloſſes and pretences, and not to proceed according to a mans own will and private affections; becauſe Talis diſcretio diſcretionem confundit, &c. Co. l. 5. 99. b. 4. in *Rooks* caſe.

Common of Vicinage.

50 If the Commons of the Town of A. and of the Town of B. are adjacent, and that the one ought to have common with the other becauſe of vicinage, and in the Town of A. there are 50 acres of Common, and in the Town of B. 100 acres of Common; In this caſe, the Inhabitants of the Town of A. cannot put more Cattle in their Common of 50 acres, than that will feed, without having any reſpect to the Common within the Town of B. nec è converſo; for the original cauſe of this Common for cauſe of vicinage was not for profit; but for the preventing of Suits in a Champian Country, by reaſon of the reciprocal eſcapes out of the one Town into the other; And therefore if the Common of the Town of A. will depaſture 50 Cattle, and that of the Town of B. 100 Cattle, it can be no prejudice to the one or to the other, if the Cattle of the one Town do reciprocally eſcape and depaſture out of the one Town into the other; For if all their Cattle depaſture promiſcuouſly together, per my & per tout, that can be no prejudice to the one or to the other, &c. Co. l. 7. 5. b. 3. Sir *Miles Corbets* caſe.

Manſlaughter in the day or night, diverſity.

51 It is a good expoſition of a Statute to expound it according to the reaſon of the Common Law: For example, at the Common Law, if one had been ſlain in a Town in the day-time, viz. while there was yet full day-light, and the Man-ſlayer had eſcaped, the Town was therefore amerced, and ſo it is holden in the 21 E. 3. Coronæ 238. Dum quis feloniè occiſus fuit per diem, niſi felo captus fuit, tota villata illa oneretur. And with this alſo agrees 3 E. 3. Coronæ 293. But if ſuch a murther or homicide had been committed in the night, the Town ſhould not then have been amerced by the Common Law; becauſe then no folke could be imputed to the Inhabitants of the Town for letting him eſcape, &c. For the Scripture ſaith, The day is ordained for man to labour in, and the night to take his reſt: And the Poet ſaith, Ut jugulent homines, ſurgunt de nocte latrones: And from this reſolution of the Common Law, the Statutes of Wincheſter 13 E. 1. and of 27 Eliz. cap. 13. are to be expounded; For albeit no time be ſpecified in thoſe Statutes, when the robbery ſhould be committed, for which damages are to be anſwered by the Hundred; yet it is adjudged in 29 Eliz. in the caſe between Milborn, and the Hundred of Dunmow in Eſſex, that for a Robbery done before day, the Hun- Co. l. 7. 6. b. 3. in *Milborns* caſe. Pſal. 104.

dred ſhall not anſwer; but onely for that, which is committed in the day time betwixt light and light. And howbeit at the Common Law (as is aforeſaid) the Inhabitants in great Towns were not to be amerced, albeit the Man-ſlayer eſcaped, when the Murther or Homicide was committed in the night; Yet at this day, ſince the ſaid Stat. of Wincheſter, by which it is enacted, that in Cities, and great Towns that are incloſed, the gates ſhall be ſhut at Sunne-ſet, until Sun-riſing next morning. Now the Inhabitants of ſuch Cities and Towns are amerciable, if ſuch Man-ſlayer eſcape, although the Murther or Homicide happen to be committed in the night, as well as if it were committed in the day; For now that act hath changed the reaſon of the Law, and therefore the Law it ſelfe is alſo changed: Ratio eſt anima legis, & mutata legis ratione, mutatur & lex: For at the Common Law before the Statute, if a man were ſlain in the night (as is ſaid before) there was no fault to be imputed to the Citie or Town; but now if they do not keep their gates ſhut according to the Statute, by reaſon whereof the offender eſcapes, then is the fault and negligence in them; and this agrees with the book in 3 E. 3. Coronæ 299. which lies alſo in Co. pro ut in margine. Vide 149. 35.

Co. l. 7. 32. The caſe of a fine *per le Roy*.

52 Inaſmuch as the King is bound by the Stat. De donis conditionalibus, as it is adjudged in the Lord Barkeys caſe, in Pl. Co. 240. by which Act the King is reſtrained from alienation (for it is provided by the ſame Act, Quod finis ipſo jure ſit nullus) Reaſon requires, that the King ſhall take benefit of the Acts of 4 H. 7. and 32 H. 8. which enable the Tenant in tail to barre his iſſues; For it is agreed in all our Books, that the King ſhall take benefit of any Act, although he be not named (12 H. 7. 21. 35 H. 6. 60. Pl. Co. ubi ſupra) And it would be hard, if the King being ſeiſed in tail of a gift made to the Subject, ſhould be in worſe condition than if he were not King.

Stat. *De donis* binds the King and therefore he takes benefit of 4 H. 7. & 32 H. 8.

Co. l. 8. 173. b. *Virgil Parkers* caſe.

53 The Kings Tenant by Knight-ſervice commeth full his lands for the jointure of his wife that ſhall be, and after marriage he demiſeth the other halfe for years for the payment of his debts and legacies, and dieth ſeiſed of no l. to his younger Children: In this caſe it was reſolved, that inaſmuch as the advancement of his wife is as well within the Statute of 27 H. 8. as the payment of his debts, and the preferment of his children; and for that the operation of that Statute doth principally take effect by the death of the Kings Tenant: For that cauſe, albeit the eſtate of the Feme hath the precedency; yet the Kings third part ſhall be taken equally out of both thoſe halfs, and not out of the half ſo demiſed onely. And ſo it was alſo reſolved 7 M. 41 & 42 Eliz. between Remington and Savage, and the 23 Eliz. in Thynnes caſe. And agrees alſo with the continuall experience of the Court of Wards.

Equality of the third part deſcending.

Co. l. 10. 84. a. 4. *Leonard Leveis* caſe.

Co. l. 95. a. 4. *Connys* caſe.

54 In a writ of Meſne the Parol ſhall not ſtay for the nonage of the Plaintiff; for it is not reaſon, that the Infant ſhall be diſtrained for the ſervices of the Meſne, during his nonage (which indeed he cannot do yong) and ſhall not have remedy till his full age; but inaſmuch as his nonage ſhall not prejudice him from the payment of the rent during his nonage, the Law alſo in that caſe, gives remedy to him during his nonage, &c.

In a writ of Meſne the parol ſhall not ſtay for Infancy.

Co. l. 9. 133. b. 3 *Matth. Meves* caſe.

55 A. ſeiſed of Gavelkind lands, holden in ſocage of I. S. and of other lands holden in Capite, deviſeth part thereof to B. the eldeſt ſonne of his ſon (being dead) and the reſt to his youngeſt ſon, and dies, B. being within age: In this caſe it was reſolved, that the King ſhall have the third part out of each ſeverall part, ſo that the charge ſhall be equall, and ſhall not fall upon one of the parts onely. Vide 35 H. 8. Br. Teſtam. 19 E. 3. Aſſ. 178. 28, & 22 Eliz. 366. b. Dyer.

Equality of the third part deſcending.

ty of exe- g a re- linance.

56 If a man be bound in a Statute Merchant, and after makes a feoffment of parcel of his lands to one man, and of another parcel of his lands to another man, and the Recognisee sues execution upon the Statute, and hath execution against one of the Feoffees; Here, that Feoffee shall have an Audita querela against the other Feoffee, to shew cause why the Recognisee shall not have execution against the lands of that other Feoffee, as well as against the lands which he hath, &c. F. N. B. 103. B. Pl. Co. 72. *Rosses* case. & Co. l. 3. 12. b. 4. Sir *Will. Herberts* case.

ty of a la- ture m former.

57 The Statute Merchant (made 13 E. 1.) binds all the lands of the Conisor to the execution, and provides, that they shall be delivered to the Conisee upon reasonable extent; but speaks not a word, that they shall be delivered to the Extendors, in case they extend them too high; yet they shall be delivered to the extendors by the equity of the Statute of Acton Burnel made before (viz. Anno 11 E. 1.) which saith, that the goods prayed too high shall be delivered to the Prayers themselves at the rate they set them, &c. (Vide 44.) And yet the Statute Merchant is a penal law. Pl. Co. 82. b. 3. *Partridg*, verse. *Strange* and *Croker*.

l Judgement ars a new a- ion.

58 If a man bring an action of Debt upon an Obligation, and he is barred by judgement, so long as that judgement stands in force, he cannot have a new action; pari ratione, when he hath judgement in an action upon the same Obligation, so long as that judgement remains in force, he shall not have a new action. Co. lib. 6. 46. a. 2. in *Higgins* case.

Copihold fines must be

59 If the fines of Copiholders of a Mannor be uncertain, the Lord cannot demand or exact excessive or unreasonable fines; but if he do, ꝑ Copiholder may refuse to pay the fine, and the reasonableness thereof shall be determined by the Justices, &c. Quàm rationabilis debet esse finis non definitur, sed omnibus circumstantiis inspectis pender ex justiciariorum discretione; And so it was adjudged in C. B. between Stallon and Brady, P. 9. Jac. Rot. 1845. Vide Co. l. 4. 47. b. Co. l. 11. 44. a. 4. in *Richard Godfreys* case.

reasonable.

60 An advowson descends to two Coparceners, one of them being within age, and in ward, the Guardian marries with the elder, the Church is void, the Guardian presents in the name of both the sisters, and the Church is void again when the younger sister comes to full age; In this case, it seems the eldest shall have the Presentation, if the younger sister will not joyn with her, for this shall be said the commencement of the Turn, because the presentment was before in both their names: Quære tamen, because it may be imputed to the folly of the Baron, who would not present in his and his wifes name, when he had full power to do it, according to Max. 117. Dyer 55. 5. 34. 35 H. 8.

Coparceners. dictment. dict.

61 If a Jury eat or drink before their agreement at their own costs, that offence is amiable, but if it be at the costs of either party, it is cause of Errour in the judgement that passeth upon such a verdict, because it implies affection and suspition. Dyer 55. 10. 34 & 35 H. 8.

62 Vide Max. 178. 22.

hibition a- inst com- ing of

63 If a Parson of a Church and A. be Tenants in Common of a Wood, and A. endeavours to make Waste, the Parson for the preservation of the timber trees shall have a prohibition against him, that he shall not make Waste; and the reason thereof is said to be, for that if the Parson of a Church will waste the inheritance of his Church to his private use in selling the trees, the Patron may have a prohibition against him; for the Parson is seised as in right of his Church, and the Glebe is the Dower of his Church (for thereof it is said to be endowed, and so say many ancient records) and therefore inasmuch as a prohibition lyeth against him, reason requires that he shall have like remedy against him, who holds with him in common. See likewise ubi suprà, a notable case, wherein the Bishop of Duresme is inhibited to commit Waste in the Woods belonging to his Bishoprick, at a Parliament holden at Carlisle in the 35 E. 1. by the ordinary remedie at the Common Law by prohibition out of the Chancery, &c. Vide F. N. B. 49. 3. Co. l. 11. 49. a. 2. in *Richard Liford's* case.

11 H. 7. 12. b. 64 A man binds himſelfe and his heirs in an obligation having heirs and leaving lands both of the part of the father and of the mother; In this caſe, both the heirs ſhall be proportionably charged. Co l. 2. 25. b. 4. In the caſe of Bankrupts. Lands equ charged.

Dyer 186. 68. 2 Eliz. 65 The Statute of 1 M. 7. ordaines, that all Fines, whereupon proclamations are not duely made, by reaſon of the adjournment of any term by Writ, ſhall be as good, as if that terme had been holden from the beginning to the end, and proclamations therein made according to the Statute of 4 H. 7. 24. The ſaid Statute of 1 M. ſpeaks of the adjournment of the whole terme, yet if part of the terme be onely adjourned, that is taken to be within the equity of the ſame Statute, as it happned in 2 Eliz. when in Tr. T. there were but two dayes dies juridici. Fines.

Dyer 230. 56. 6 Eliz. 66 A Servant makes a bill, teſtifying the buying of ware to the uſe of his Maſter, and this without ſeal, in which he binds himſelfe to pay the debt; In this caſe, debt lyeth not againſt the Servant, but action upon the caſe; for it is the debt of the Maſter, and the Aſſumpſit of the ſervant. Alſords caſe. Contract by ſervant.

Hob. 91. the L. W. Howards caſe. 14 Jac. 67 In the Starre-Chamber in a cauſe betweene the Lord William Howard Plaintiff, and Bell and others Defendants, It was holden by Coke and Hobert, that the Tenants of a Manor claiming Tenant right (which the Plaintiffe being Lord of the Manor ſuppoſed to be void in Law) might all joyne together in a peaceable manner, to defend the cauſe, being common to them all; and therefore, though ſome particular perſons were ſued, yet the reſt might defend the ſuit upon their common charge: And the reaſon was; for that, the title being one againſt all, There was in effect but one defence, and one Defendant, for the trial of one mans caſe tried all; And therefore the Courts of Juſtice do every day deny them to be witneſſes one for another in ſuch generall caſes, as in caſes of Common, Modus decimandi, and the like, wherein alſo it is many times ordered for avoiding of multiplicity of ſuits, that a trial be had in one mans caſe for all; Now therefore as they are acknowledged parties to their prejudice in defence, ſo likewiſe reaſon requires, that they ſhould be in like manner allowed to be parties for their advantage: And ſo it was ſaid, it had been ruled in that Court before in the caſe of the Lord Grey of Groby; yet the Lord Chancellor ſeemed to be of a contrary mind, and cited a Preſident to that purpoſe in 8 Eliz. Tenant right

Hob. 120. 68 The Law doth not allow any man to ſtrike in private revenge of ill words, And the reaſon of the wiſdom of the Law in that caſe is, becauſe there is no proportion betweene words and blowes; but he that is ſtrucken may ſtrike again, per Hobert in the Lord Darcies caſe of the North, againſt Gervaſe Markham. Words and blowes.

53. *In quo quis delinquit, in eo de jure, eſt puniendus.*

Co. Inſt. part 1. 233. b. 2. 1 If a Keeper of a Parke kill any Deer without warrant, or fell or cut any Trees, Woods, or Underwoods, and convert them to his own uſe, it is a forfeiture of his office; for the deſtruction of vert is, by a mean, deſtruction of veniſon; So it is alſo if he pull down the lodge, or any houſe within the Parke, wherein hay is uſed to be put for feeding of the Deer or the like, it is a forfeiture of his Office; for, in quo quis delinquit, in eò de jure eſt puniendus. A Parker forfeits his office for waſt.

Co. l. 3. 11. b. 4. Sir *William Herberts* caſe. 2 At the Common Law, if a common perſon had ſued a Recognisance, or Judgment for debt or damages, he could not have had the body or lands of the Defendant in execution; but in ſuch caſe ſhould have had execution onely of his goods and Chattels, or of graine, or ſome Goods liable for debt recovered, and perſon for Treſpaſſe.

ſome other preſent profit, which grew upon the land; for which purpoſe the Common Law gave the Sheriffe power, either by a Levari facias, to levie them upon his Lands and Chattels, or by a Fieri facias, upon his Goods and Chattels; for, in as much as he failed to ſatisfie the debt and damages by his Goods and Chattels, or ỹ iſſues and profits of his land, reaſon required, that they onely ſhould be taken in execution, and not his body or lands: On the other ſide, if a man commit any force; for as much as his body is a chief agent therein, the Common Law doth then ſubject his body to impriſonment, which is the higheſt execution, whereby he loſeth his liberty until he hath both ſatisfied the party, and made fine to the King; and therefore it is a rule in Law, that in all actions quare vi & armis, a Capias lieth, and where a Capias lieth in proceſs, there (after judgement) a Capias ad ſatisfaciendum lyeth, and there alſo the King ſhall have a Capias pro fine; And with this agrees 8 H.6.9. 35 H.6.6. 22 E.4.23. 40 E.3.25. 49 li.3.2. and many other bookes; Howbeit by the Statutes of Marlbridge cap. 23. and Weſtm. 2. cap. 11. a Capias was given in accompt (for at the Common Law the proceſs in accompt was diſtreſſe infinite) and after by the Statute of 25 E.3.cap. 17. Such proceſſe was given in debt, as in accompt, &c. And as concerning the other aboveſaid Writs of execution, viz. a Levari facias, and a fieri facias, they ought to be ſued within the yeer after the Judgement, or the Recognizance acknowledged, otherwiſe at the Common Law the Plaintife or Conuſee was driven to his writ of debt: Howbeit now by the ſtatute of Weſtm. 2. cap. 45. a ſcire facias is given, and by the ſtatute of Weſt. 2. cap. 18. Cum debitum fuerit recuperatum, &c. the Elegit is given for a moity of the land, &c. which was the firſt Act, that ſubjected land to the execution of a Judgement or of a Recognizance, which is in the nature of a Judgement (F.N.B. 265. g.) And by the Statute of 13 E. 1. De mercatoribus, 27 E. 3. cap. 9. & 23 H. 8. cap. 6. upon a Statute Merchant, or Staple, all the lands which the Conuſor hath at the time of the Conuſance, ſhall be extended, in whoſe hands ſoever they afterwards come, &c. Howbeit in debt againſt the heir upon an obligation made by the Anceſtor, the Plaintife by the Common Law ſhall have all the land, which deſcends unto him, in execution againſt him, and yet he ſhall not have execution of any part thereof againſt the father himſelfe; but the reaſon hereof is, becauſe otherwiſe the Plaintife would be without remedie; for the Common Law gives an action of debt againſt the heir, and then if he might not have execution of the land againſt the heir, he ſhould reap no fruit by his action; becauſe the Chattels of the debtor belong to the Executors or Adminiſtrators, &c.

Goods too high apprayſed delivered upon apprayſment.

3 The Statute of 13 E. 1. (called the Statute merchant) binds all the lands of the Conuſor to the execution, and provides, that they ſhall be delivered to the Conuſee upon reaſonable extent, and ſpeaketh not a word of the delivering them to the extendors, in caſe they extend them too high; yet they ſhall be delivered to the extendors, in that caſe, by the equity of the Statute of Acton Burnel made before (viz. anno 11 E. 1.) which ſaith, that the goods prayſed too high ſhall be delivered to the Prayſors themſelves at the rate they ſet them; for reaſon requires, that they ſhould be puniſhed by the ſame meanes, that they intended to to puniſh others. Vide Max. 57. 44. and 57.

Pl. Co. 81.b.3. in *Partridge vers Strange* and *Croker*.

Adonibezek.

4 Quum autem fugerat Adonibezek, perſecuti ſunt eum (Iſraelitæ) & prehendentes eum, amputarunt pollices manuum ejus, & pedum ejus, tum dixit Adonibezek ſeptuaginta reges, pollicibus manuum ſuarum, & pedum ſuorum amputatis; colligebant ſub menſa mea; quemadmodum feci, ſic rependit mihi deus, &c.

L. *Jud.* cap. 1. ver. 6, 7.

59 *Omne majus continet in se minus.*

Co. Inst. pars 1 44 b. 1.

1 Albeit by the Statute of 13 El. cap. 10. Eccleſiaſtical perſons are in expreſſe terms reſtrained from making any eſtates of the lands, which they hold in right of their Biſhopricks, Colledges, Churches, &c. other then for one and twenty years, and three lives from the making of them, yet may they make Leaſes for leſſer terme or fewer lives, &c. 25. Grants of eccleſiaſtical perſons.

Co. ib. 45. b. 3.

2 In the Kings caſe this word Committo doth amount ſometimes to a grant, as when he ſaith, Commiſimus de W. de B. officium Seneſchalliæ, &c. quam diu nobis placuerit, and by that word alſo he may make a Leaſe, and therefore a fortiori a common perſon may do the ſame. Commiſſion imports a Leaſe.

Co. ib. 52. b. 1. *Hill.* 39 El. *inter Stanton & Barnes* in B. R. & Co. l. 3. 9. a. 3. *Heydons* caſe & l. 4. 23. a. *Gravenors* caſe.

3 A cuſtome of a Mannor, time out of mind uſed, was to grant certaine lands, parcel of the ſaid Mannor, in Fee-ſimple, and never any grant was made to any and the heirs of his body, for life, or for years; And the Lord of the ſaid Mannor did grant to one by Copie for life, the remainder over to another, and the heirs of his body: And it was adjudged, that the grant and remainder over was good; for the Lord having authority by Cuſtome, and an intereſt withall, might grant any leſſer eſtate; becauſe in this caſe the Cuſtome, that enableth him to the greater enableth him to the leſſer, Omne majus continet, &c. It is otherwiſe where one hath but a bare authority, &c. 17. Copiholds granteable in fee may be granted for leſſer terme.

Co. ib. 68. a. 1.

4 Fealty is a part of Homage, and incident unto it; becauſe all the words of Fealty are comprehended within Homage.

Co. ib. 223. a. 3.

5 A man before the Statute of Quia emptores terrarum might have made a feoffment in fee, and added further, that if he or his heirs did alien without licence, that he ſhould pay a fine, at that time this had been good; So likewiſe it is ſaid, that then the Lord might have reſtrained the alienation of his Tenant by Condition; becauſe the Lord had then a poſſibility of reverter; And therefore it is ſo ſtill at this day in the Kings caſe; becauſe he may reſerve a tenure to himſelfe, &c. Reſtraint was ſometimes good.

Littl. §. 418. Co. ibid. 253. a. 4.

6 When a man makes a feoffment of lands lying in ſeveral towns within the ſame County, Livery of Seiſin given of the land lying in one of thoſe towns in name of all the reſt, lying in the other towns, will paſſe the eſtate of all to the Feoffee; And therefore a fortiori it ſeems good reaſon, when a man hath title of entry into lands or tenements lying in divers towns within the ſame County before any entry by him made, that by entry into parcel thereof in the name of all, the ſeiſin of all is veſted in him, as well as if he had actually entred into every parcel: For, if it be ſo in a feoffment paſſing a new right, much more it is for the reſtitution of an ancient right, as the worthier and more reſpected in Law, &c. Claime in part good for all in the ſame County.

Co. ibid. 260. a. 3.

7 If a man in priſon ſhall not be bound by a recovery upon default for want of anſwer in a Court of Record in a real action, which is matter of Record; A multo fortiori a deſcent in pais, which is a matter of Deed, ſhall not for want of claime bind him that is in priſon, &c. A priſoner not bound for a default.

Co. ibid.

8 As the argument à minore ad majus doth ever hold affirmatively, ſo the argument à majore ad minus, doth ever hold negatively, and the reaſon hereof is this, Quod in minori valet, valebit in majori; & quod in majori non valet, nec valebit in minori. *Major & minor*: Negative Affirmative.

Co. Inſt. pars 1 262. Litt. §. 441.

9 At the Common Law before the Statute of Non-claim (Anno 34 E. 3. cap. 16.) and in the Stat. of 4 H. 7. cap. 24. If a man that had title of entry into lands, had not taken his claim within a year and a day, after a fine levyed of the ſame land, he had loſt the land for ever; Howbeit in that caſe, if he that had ſuch right were out of the Realm at the time One out of the Realm not barred by a deſcent.

time of the fine levied, his title had been thereby saved: And if against a fine which is a matter of record, the title of a stranger shall be in that case saved, much more against a descent, which is a matter in fait, shall the entry of him that is out of the Realm at the time of the descent cast, &c. be preserved; so that he may well enter at his return, notwithstanding such descent, &c.

Release of all demands dischargeth all actions, &c.

10 If the Plaintiff after judgement release all demands, the execution is discharged: Also by a release of all demands, all actions real, personal, and mixt, are discharged. Likewise Appeals, title or right of entry, Rent-service, Rent-charge, Rent-seck, Common of Pasture, &c. A warranty, which is a Covenant real, and all other Covenants real & personal, Estovers, all manner of Commons, and profits apprender, Conditions before they be broken or performed, and also after; Annuities, Recognisances, Statutes Merchant, and of the Staple, Obligations, Contracts, &c. All these and divers others by the word Demands, are released and discharged; because that word, being of so large an extent, contains them all, &c. Co. ib. 191. a. 4 & b. Litt. §. 508.

No disseisin of rent without attornment.

11 A Disseisor cannot disseise the Lord of the rents and services without the attornment of the Tenants to the Disseisor; For seeing an attornment is requisite to a feoffment, and other lawful conveyances; A Fortiori, a Disseisor, or other wrong doer shall not gain them without attornment; The like law is of an Abator and an Intruder. Co. ib. 309. b. 4.

Retenced right.

12 Where the Stat. of 32 H. 8. cap. 9. (made for the suppression of Maintenance) prohibiteth buying, selling, &c. of any pretenced rights or titles in the plural number; nevertheless any one right is within that Statute, &c. Pl. Co. 83. & 86. Partridges case. Vide 40. Co. ib. 369 a. 4. Vide infra 40.

Manslaughter. Amias.

13 By a pardon of murther, Man-slaughter is also pardoned. Finch 21.

14 An attaint supposing a Verdict to have passed before two Justices, whereas it passed before four, is good enough. Finch, ibid.

Recovery.

15 A recovery pleaded of three acres where it was of six, is good enough. Finch, ibid.

Condition.

16 A condition, that I shall not enfeoff I. S. is broken, if I enfeoff I. S. and I. D. Finch, ibid.

Copihold.

17 A Copy-holder of a Mannor, where the custome giveth liberty to demise in fee, may demise for any lesse estate without other prescription. Vide 3. Finch, ibid.

Devise.

18 Where the custome is, that a man shall not devise his lands for any higher estate than for terme of life; Yet if a devise be made in fee, and the Devisee claim but for life, the devise is good. Finch 21. 18 E. 3. 8.

Devise.

19 By the Statute of 32 H. 8. cap. 1. that giveth power to devise two parts of ones land, a devise of the whole had been good for two parts, although the Stat. of Explanations (34 & 35 H. 8. cap. 5.) had not been made. Finch 21. 2, & 3 P. & M. Dyer 150. b.

Fences. Jointure.

20 An estate of Fee-simple conveyed to the Feme for her joynture, and in satisfaction of her Dower is a joynture within the equity of 27 H. 8. For if an estate for life be a competent livelihood for her, much more an estate in Fee-simple, &c. Sir Morrice Denurs case. Dyer 8 El. 248. Co. l. 4. 3. b. *Vernons* case.

Copihold, without estate.

21 Where the custome of a Copihold Mannor is to grant Copihold lands for one, two, or three lives, there a grant to a Feme Durante viduitate is good; for that is a lesse estate, and therefore included in the other, &c. Downes case. Co. l. 4. 29. b. 4.

Not implead in Court.

22 This word (Attaint of murther) in the Statute of 3 H. 7. cap. 1. shall not be meant onely of a person that hath judgement of life, but also extended to a person convicted by confession or verdict; for a person attaint is a person convict and more. 36. Co. l. 4. 46. a. 4. in *Kath. Wrotes* case.

Co. l. 4 106. a. 4. in *Adams & Lamberts* case.

23 Albeit by the expresse words of 1 E. 6. cap. 14. Estates in fee simple (given to superstitious uses) seem onely to be given to the King, (for the words are, To the finding of a Priest to have continuance for ever, &c.) yet that Stat. by construction extends also to every lesse estate, as to an estate in taile for life, &c. Superstitious uses.

Co. l. 5. pars 1. 6. b. 4. The Kings Ecclesiastical law.

24 If by the proviso of 1 Eliz: cap. 2. the Ecclesiastical jurisdiction of Arch-Bishops, Bishops, and other inferiour Officers is saved: so that they may still punish by deprivation and other Ecclesiastical censures, all such as shall deprave the book of Common Prayer, notwithstanding by the same Act there is other provision made for the punishment of such offenders before temporal Magistrates; much more shall high Commissioners (authorized by another Statute of the same year, cap. 1.) have power to inflict due punishment for the like offence; albeit in the said Act of 1 Eliz. cap. 2. there be no such provision made for them, as for Bishops, &c. Because, Qui licet, quod majus est, non debet, quod minus est, non licere. The high Commission may censure depravers of the Common Prayer.

Co. l. 5. 6. b. 1. The Lord *Mountjoys* case.

25 The words of the Statute of 1 Eliz. concerning leases to be made by Bishops, &c. are these, other then for the terme of 21 yeares, or three lives (without saying, or under) and yet a lease for a lesse term is good: There is also the same exposition of the Stat. of the 13 Eliz. cap. 10. whereof the words (as to that point) are the same. 1. Leases by the Clergy.

Co. l. 5. 29. b. 4. in *Princes* case.

26 In Princes case, in the 5 Rep. it was said, that it was adjudged in a case between Vere and Jeffres in tempore Reg. Eliz. That where one had goods onely in an inferiour Diocese, yet the Metropolitan of the same Province pretending that he had bona Notabilia in divers Dioceses, committed the administration, &c. This administration was not void; but onely voidable by sentence; because the Metropolitan hath jurisdiction over all the Dioceses within his Province: But if an Ordinary of a Diocese commit the administration of the goods, when the party hath bona Notabilia in divers Dioceses, such administration is meerly void, as well to the goods within his own Diocese, as elsewhere; because he can by no means have jurisdiction of the cause. Administration of *bona Notabilia*.

Co. l. 5. 91. a. 1. in *Hoes* case.

27 A man assignes a debt unto Queen Eliz. by deed enrolled in satisfaction of a debt due to her from him, as Collector of the Fifteens, with proviso, that if the Lord Treasurer, and the Barons of the Exchequer, or any two of them, for some reasonable cause should disallow & revoke the same, that then it should be void: In this case revocation by three of the Barons shall be sufficient; for if three doth it, two doth it at least, &c. Three includes two.

Co. l. 5. 115. a. 1. in *Wades* case.

28 If a man tender more money then he ought to pay, that is good enough; for Omne majus continet in se minus, and the other ought to receive so much thereof, as is due unto him: Quando plus fit, quam fieri debet, videtur etiam illud fieri, quod faciendum est: Et in majore summa continetur minor. Tender of a greater sum.

Co. l. 6. 13. a. 4. in the cases of pardon. H. 29 Eliz.

29 In the general pardon of the 28 of Eliz. Burglary was excepted; and thereupon the Judges were then moved, whether the attainder of Burglary was thereby also excepted; And it was resolved that it was; For if Burglary it selfe was excepted, while it was yet doubtful, whether it would be found Burglary, or no, and before it did appeare to the eye of the Law to be so; à fortiori when Burglary appears upon record by judgement of Law, it shall be excepted. Attainder of Burglary pardoned.

Co. l. 6. 56. a. 1. in the Lord *Chandos* case.

30 By the grant of the Mannor, without this word, of the reversion, the reversion shall passe, albeit at that time the Grantor had not the Mannor in possession, but in reversion; for this word Mannor includes all estates, and degrees of estates, of or in the Mannor: As if A. gives the Mannor of B. to B. in taile, and after the Donor is attainted of treason, whereby the King is seised of the reversion, and after by his Letters patents grants Manerium de D. to another and his heirs; In this case albeit By the w Mannor a verson p seths.

albeit the King grants the Mannor of D. is in poſſeſſion, yet the reverſion ſhall paſſe; for the King hath an eſtate (viz. the reverſion in fee) grantable in him, & the eſtate taile of the common perſon need not be recited, &c.

The King not bound.

31 If the King be Tenant pur auter vie, and makes a leaſe for forty years; here, albeit the King (having but an eſtate pur auter vie) cannot abſolutely contract for a leaſe of forty years; yet without any recital or mention of the eſtate for life, the leaſe is good; for the leaſe for years is in judgment of Law, leſſe than a leaſe pur auter vie, and the King doth no wrong or prejudice to any by ſuch a demiſe, neither yet is he deceived in his grant, becauſe, in judgement of Law, that is a leaſe for forty years, ſi Ceſtuy que vie ſhall ſo long live, &c. Co. l. 7. 12. a. 4. in *Engleſields* caſe.

Fine in a court Leet.

32 If for an amerciament upon an offence committed out of a Court Leet and found by the Jury (whereof the Jury onely have conſiſance and for which they onely are to impoſe the amerciament) the Lord of the Leet hath power to diſtrain, &c. Much more for a fine impoſed by the Steward in Court for ſome contempt, &c. committed in the Court it ſelf (and whereof the Steward only hath conſiſance) ſhall the Lord, &c. diſtrain the goods of the party offending, and impound them, &c. or elſe make Sale thereof at his election, &c. Co. l. 8. 40. b. 4. in *Sharrington* caſe.

A leaſe for years leſſe than an eſtate for life.

33 If a man upon a grant reſerve unto himſelfe power to make leaſes, ſo that they ſhall not exceed 21 years, or three lives; In that caſe, he may make leaſes of 99 years, if any three ſhall ſo long live; becauſe ſuch a leaſe exceeds not three lives, but is in truth leſſe; for an eſtate for years, which is but a Chattel, is leſſe in eſtimation of Law, than an eſtate for life, which is a Franktenement. Co. l. 8. 70 b. in *whitlocks* caſe.

An Officer may make a Deputy.

34 When an Officer hath power to make aſſignes, he hath power, implicite, to make Deputies; For, Cui licet, quod majus eſt, non debet, quod minus eſt, non licere. And therefore when an office of Stewardſhip, or the like, is granted to one and his heirs, he may thereby make an Aſſignee, and (by conſequent) alſo a Deputy, &c. Co. l. 9. 48. b. 4. in the Earl of *Shrewſburies* caſe.

An Arreſt within the Liberties of London.

35 In Mackallyes caſe in the 9 Rep. exception was taken to the Indictment, viz. that the precept was to arreſt the Defendant, Si inventus fuerit infra libertates Civitatis prædicti (viz. London) And the Indictment was, Quid in parochia Sancti Martini Bowyer Rowe in Warda de Farringdon infra Londinum prædict. the Serjeant arreſted him, and ſo he purſued not the precept; for the precept was infra libertates London: But notwithſtanding that exception the Indictment was reſolved to be good; becauſe the ſaid Parith and Ward in London ſhall be intended to be within the liberties of London; For theſe words, liberties of London have a larger extent than the word London, and do include in them the Citie of London it ſelf, &c. Co. l. 9. 67. a. 1. in *Mackallyes* caſe.

Juſtices of the Kings Bench are Juſtices of Gaol delivery, & Oyer and Terminer.

36 The Juſtices of the K. Bench are taken to be within the words of that, of 2 E. 6. cap. 24. (which ordains, that for the tryal of accellaries in another County, than where the principal was indicted, Certificat of the Indictment of the principal ſhall be made to the Juſtices of Gaole delivery or of Oyer and Terminer; before whom the accellary is to be tryed, &c.) for that the Juſtices of the K. Bench are the ſovereign Juſtices of Gaol delivery, & of Oyer & Terminer; and therefore they are included within the ſame words; And upon the ſame ground it is holden, in 7 E. 4. 18. & 4 H. 7. 18. that if an indictment of forcible entry be removed into the Kings Bench, the Juſtices of that Bench ſhall award reſtitution, and yet the Act of 8 H. 6. cap. 9. ſpeaks onely of Juſtices of Peace; but the reaſon is, becauſe the Juſtices of the Kings Bench have ſovereign and ſupream authority in ſuch caſes: And therefore in the Lord Sanchiers caſe in the 9 Rep. the Juſtices of the Kings Bench wrote (according to the ſaid Act of 2 E. 6.) to the Juſtices of Gaole delivery in London, before whom the Principal was tryed, &c. who thereupon certified the record accordingly, &c. Co. l. 9. 118. b. 2. in the Lord *Sanchiers* caſe.

61 A matter of higher nature determineth a matter of lower nature, & contra.

Co. Inst. pars 1.83.a.4. 1 If a Tenant by Castle-guard do serve the King in his warre, he shall be discharged against the Lord, according to the quantity of the time that he was in the Kings host. Castle-g

Co. ib.115.a.3 2 If there be any sufficient proof of record or writing against a prescription, albeit such a record or writing exceed the memory or proper knowledge of any man, yet are they within memory of man, and shall make the prescription: for a matter in writing shall determine a matter in fact; and a record or sufficient matter in writing are good memorials: and therefore it is said, litera scripta manet, and when we will by any record or writing commit the memory of any thing to posterity, the phrase is, tradere monumento, &c. A record, writing of eth a Pre tion.

21 H.7.5. 3 A man hath liberties by prescription, and after taketh a grant of those liberties by Letters Patents from the King, this determineth the prescription, for a matter in writing determineth a matter in fact. Finch 29. Co. l. 6.48 a.4. Higgens case. Vide ib. part. auth. The like.

3 H.6. Dyer 50.Pl.4. 4 If an offence which is murther at the Common Law, be made treason, no appeal shall die of it; because the offence of murther is drowned, and it is punishable as treason only, whereof no appeale lyeth, &c. Finch 29. Murder dr ned by tre son.

Co. ib. 41.b.4. 5 If A. be Tenant for life, the remainder or reversion to B. for life, in this case A. may surrender to B. For, the estate of B. for term of his own life is higher than an estate for another mans life: and therefore if Tenant for life enfeoffe him in the remainder for life, this is a surrender and no forfeiture. And generally from this ground it is, that estates of lower nature are drowned in others of higher nature, when they met together in one and the same person: Hereupon also ariseth extinguishment between Lord and Tenant, &c. Tenant for life may su render to th reversioner life.

Co. l. 44. a. 2. in Sparrows case. 6 If a man bring an action of Debt by bill in London, or Norwich, or in any other inferiour Court, and after bring a writ of Debt in the Common Pleas, that suit in the higher Court, which is purchased pending the suit in an inferiour Court, shall not abate, as appears in 9 H.4. 8. & 3 H. 6. 15. Vide 44 E. 3. 22. & 27 H. 4. 44. Brimingham's case. Suit in a lo er Court a bates not co in an highe

Co. l. 6. 45. a. 2. in Higgins case. 7 After judgement upon an obligation for Debt, so long as that judgement remains in force, the Plaintiff cannot have a writ in action upon the obligation. For, as when a man hath a debt by simple contract, if he take an obligation for the same debt, or for any part thereof, that taking of the obligation determines the former contract (3 H. 4. 17. 11 H. 4. 9. 9 E. 3. 50, 51.) So when a man hath a debt upon an obligation, and by the ordinary course of Law hath judgement thereupon, the contract by specialty, which is of a lower nature, is by the judgement of the Law changed into a matter of record, which is of an higher nature. Vide 16.4. A Judgmen destroys a bond.

Co. l. 6. 45. a. 4. ibid. 8 If a man hath an annuity by deed or prescription, and bring a writ of Annuity, and hath judgement; so long as this judgement remains in force, he shall never have a writ of Annuity more, albeit the Annuity be of inheritance: but shall in that case have a Scire facias upon that judgment; because the matter of specialty or prescription is altered by the judgement into a thing of an higher nature. Vide 37 H. 6. 13. Judgment in an action of forging a false deed is a good barre in another action upon the same forgery. But if recovery be in debt upon an obligation per Justicies; there notwithstanding such judgement, the Plaintiff may have an action of debt upon the same obligation in a Court of Record; For the County Court being not a Court of Record, the obligation is not The like.

not by a judgement in that Court changed into any other thing of an higher nature; but so long as such judgement remains in force, the Plaintiff shall not have any other action upon the same obligation by Justicies in the same Court: Howbeit if a man be indebted upon an obligation, and afterwards acknowledge a Statute Staple for the same debt, and in full satisfaction of the said obligation, in that case the Creditor may sue which of them he pleaseth: for a Statute Staple or obligation in nature thereof, is but an obligation recorded; and an obligation, be it of record, or not of record, cannot disturb another: Also a bare obligation, and an obligation in nature of a Statute Staple, are two distinct bonds made by assent of the parties without process of Law, whereof the one hath no dependance upon the other; but in an action brought upon an obligation, the suit is grounded upon the obligation, as the evidence upon a foundation, and the Plaintiff hath judgement to recover the debt due by the same obligation; so that by a judicial proceeding and act in Law, the debt due by the obligation is transformed and metamorphosed into a matter of record: And a judgement in a Court of Record is a higher matter, than a Statute Staple, Statute Merchant, or any recognisance acknowledged by assent of parties, without judicial proceeding. M. 2. Jac. Rol. 372. in Com. Banco. 11 H. 4. Br. Faits 19.

9. In the Lord Sanchiers case in the 9 Rep. it was moved, whether the said Lord Sanchier might not, in the Term-time, be indicted, arraigned, and convicted at Newgate before Commissioners of Oyer and Terminer, for the County of Middlesex, and it was resolved that he could not; For the Kings Bench is more than an Eire, and therefore in the Term-time no Commissioners of Oyer and Terminer, or of Gaole delivery, by the Common Law, may sit in the same County, where the Kings Bench sits; because in præsentia majoris cessat potestas minoris: And with this accords the 27 Assises, Pl. 12. But Carlile and Inweng, the two Conservants of the Lord Sanchier, were indicted and attainted in London, where the murther was committed, before Justices of Oyer and Terminer, in the Term-time; because it was in another County, than where the Kings Bench sate. Co. l. 9 118. b. 3. in the Lord *Sanchiers* case. & in the case of the Marshalsie. Co. li. 10. 73. b. 4.

10. At the Common Law the Court of Marshalsie had jurisdiction of Pleas of the Crown, and had a general authority in effect, as Justices in Eire had; for they were in part the Viceregents of the Chiefe Justice of England within the Verges: Howbeit after that by the Statute of 28 E. 1. cap. 5. the Justices of the Kings Bench were enjoyned to follow the Court, the general authority of that Court as to those purposes ceased; because they being onely the Viceregents of the Chief Justice, in his presence their authority ought to cease, for, in præsentia majoris, cessat potestas minoris, &c. Co. l. 10. 71. a. & 73. b. in the case of the Marshalsie.

11. Sir Thomas Wyat being seised of divers Mannors in taile, the remainder in H. 8. in fee in the beginning of Queen Maries reign forfeits them for treason, whereby they escheat to the Queen. In this case, the estate tail was utterly extinct, and the Queen is in of her ancient Fee-simple executed, for she cannot be in of the Fee-simple determinable upon the entaile, because then there would be two Fee-simples in the Mannors which is absurd: Shall therefore rather than so, the entaile shall be merged in the Queens ancient Fee-simple. Dyer 115. 65, 66. 1, 2 P. M.

12. An Exigent is returnable by the roll Octabis Mich. but the writ of Exigent was returnable Mense, and the Defendant was outlawed between Octabis and Mense, and this was adjudged error; because the roll is of more credit than the writ, and determines it. Dyer 211. 32. 4 Eliz.

62 The more worthy thing draweth unto it things of leſſe worthineſſe.

Finch, 23. 1 The body of a man is more worthy than land, therefore land ſhall follow the nature of the perſon, as a villein ſhall make free land to be villein-land; but villein-land ſhall not make a free man to be a villein: So likewiſe the Kings land, which he hath in his natural capacity, ſhall be demeaned according to the priviledge and prerogatives of his body royal: As if the King hath iſſue a ſonne and a daughter by one Venter, and a ſon by another Venter, and purchaſeth lands and dieth, and the eldeſt ſon enters and dies without iſſue, the daughter ſhall not inherit thoſe lands, nor any other Fee-ſimple lands of the Crown; but the younger brother ſhall have them: Where note, that neither poſſeſſio fratris doth hold of lands, which are the poſſeſſions belonging to the Crown: neither yet doth Half-bloud make any impediment to the deſcent of lands of the Crown; as it fell out in experience after the deceaſe of E. 6. to Queen Mary, and from Queen Mary to Queen Eliz. both which were of the halfe bloud, and yet inherited not onely the lands, which King Edward and Queen Mary purchaſed, but alſo the ancient lands parcel of the Crown. A man, that is King by deſcent on the part of his mother, purchaſeth lands to him and his heirs, and dies without iſſue, this land ſhall deſcend to the heir of the part of the mother; whereas, in the caſe of a Subject, the heire of the part of the father ſhall have them: So King Henry the eighth purchaſed lands to him and his heirs, having iſſue two daughters, Queen Mary, and Queen Eliz. and after the deceaſe of E. 6. the eldeſt daughter Queen Mary did inherit onely all the lands in Fee-ſimple; for the eldeſt daughter or iſſuer of a King ſhall inherit all his Fee-ſimple lands: So it is alſo if the King purchaſeth lands of the cuſtome of Gavelkind, and die having iſſue divers ſons, the eldeſt ſon ſhall onely inherit thoſe lands: And the reaſon of all theſe caſes is (as more is ſaid) for that the quality of the perſon doth in theſe and many other like caſes alter the deſcent, ſo as all the lands and poſſeſſions, whereof the King is ſeiſed in jure Coronæ, ſhall ſecundum jus Coronæ attend upon and follow the Crown; And therefore whomſoever the Crown deſcends, thoſe lands and poſſeſſions ſhall deſcend alſo: For, the Crown and the lands, whereof the King is ſeiſed in jure Coronæ, are Concomitantia: And the lands and poſſeſſions belonging to the Crown do follow and attend upon the Crown, as upon the more worthy, &c.

The body more worthy than land.

Co. Inſt. pars 1. 15. b. 3.

Co. ib. 43. a. 4. 2 When the Royal body politique of the King doth meet with the natural capacity in one perſon, the whole body ſhall have the quality of the Royal politique, which is the greater and more worthy; For Omne majus trahit ad ſe quod minus eſt: And therefore, in judgement of Law, the King, as King, cannot be ſaid to be a Minor; becauſe in the Royal body politique there can be no minority: So likewiſe if the right heire of the Crown be attainted of Treaſon, yet ſhall the Crown deſcend to him, and (eo inſtante) without any other reverſal, the attainder is utterly avoided, as it fell out in the caſe of H. 7. &c.

The King a minor.

Co. ib. 87. b. 3. 3 If a man be ſeiſed of a Rent-charge, Rent-ſeck, Common of pſture, or ſuch like inheritance which do not lie in tenure, and dieth, his heire being within the age of 24 years; In this caſe, the heire may chuſe his Guardian; but if he hold lands in ſoccage together with ſuch like inheritances; Then ſhall the Guardian in ſoccage not onely take into his hand the lands holden in ſoccage, but ſuch inheritances alſo; becauſe he hath the cuſtodie of the heir, &c.

Things in grant follow land.

Co. ib. 114. b. 2. 4 Albeit a man cannot preſcribe to have bona & catalla proditorum, felonum, &c. yet may they, or the like priviledges be had obliquely (or by

Of felons goods no preſcription.

by a Means) by preſcription; For a County Palatine may be claimed by preſcription, and by reaſon thereof to have bona & catalla Proditorum, felonum, &c.

rant of a er paſ- ſervices.,

5 Whatſoever paſſeth by livery of ſeiſin, either in deed or in Law, may paſſe without deed, and not onely the rents and ſervices (parcel of the Manor) ſhall with the demeſnes (as the more principal and worthy) paſſe by livery without deed; but likewiſe all other things regardant, appendant, and appertinent to the Manor (as incidents and adjuncts to the ſame) ſhall together with the Manor paſſe without deed, and all theſe ſhall ſo paſſe without ſaying, cum appertinentiis. Co.ib.121.b.4

ileages aſt.

6 If A. be ſeiſed of a Manor, whereunto the franchiſe of Waife and Stray, and the like are appendant, and the King purchaſeth the Manor with the appurtenances; Now are theſe Royal franchiſes remitted to the Crown, and not any longer appendant to the Manor, &c. Co.ib.121.b.4.

mmon Law Franchiſe.

7 When a matter alleaged extendeth into a place at the Common Law, and likewiſe into a place within a Franchiſe, it ſhall be tried at the Common Law. Co.ib.125. b.3.

Aſſiſe in ſuis Comi- s at the mmon law.

8 Before the Statute of 7 R.2. cap. 10. no Aſſiſe in confinio Comitatus lay at the Common Law for the recovery of rent iſſuing out of lands that lay in ſeveral Counties; but for a Common of Paſture, Turbary, Piſcary, Eſtovers, and the like in one County, appendant or appurtenant to land in another County, an Aſſiſe in confinio Comitatus did lie at the Common Law; becauſe the land as the more worthy drew them to it; But land could not be appendant or appurtenant to land; And ſo it is of a Advowſon in one County, to lands lying in another County; For, in that caſe alſo, the like Aſſiſe did lie at the Common Law, &c. Co.ib.154.a.14

ſeiſe of one ner ſhall t prejudice other.

9 If three Joyntenants be diſſeiſed, and they arraign an Aſſiſe, and one of them releaſe to the Diſſeiſor all actions perſonal, this ſhall barre that Joyntenant, but it ſhall not barre the other two Plaintiffs; For having regard to them, the realty ſhall be preſerved, and Omne majus trahit ad ſe minus dignum: And in a Writ of Ward brought by two, the releaſe of the one ſhall not grieve the other, but ſhall enure to his benefit; For he ſhall recover the whole Ward, and hold his Companion out, &c. Co.ib.285.a.4. & Co.l.2.68.a. 4. in *Tookers* caſe. 30 H. 6. Barr. 59. 45 E. 3. 10.

10 In Law there are three kinds of rights, Jus proprietatis, Jus poſſeſſionis, and Jus proprietatis & poſſeſſionis, and this laſt is anciently called Jus duplicatum, or Droit, Droit: For example, if a man be diſſeiſed of an acre of land, the Diſſeiſee hath Jus proprietatis, the Diſſeiſor Jus poſſeſſionis, and if the Diſſeiſee releaſe to the Diſſeiſor, he then hath Jus proprietatis & poſſeſſionis: And regularly it holdeth true, that when a naked right to land is releaſed to one, that hath Jus poſſeſſionis, and another by a mean title recover the land from him, the right of poſſeſſion ſhall draw the naked right with it, & ſhall not leave a right in him, to whom the releaſe is made: For example, if the heir of the Diſſeiſor be in by deſcent, and A. doth diſſeiſe him, and the Diſſeiſee releaſeth to A. Now hath A. the meer right to the land; but if the heire of the Diſſeiſor enter into the land, and regain the poſſeſſion, that ſhall draw with it the meer right to the land, and ſhall not regain the poſſeſſion onely, and leave the meer right in A. but by the recontinuance of the poſſeſſion, the meer right is therewith veſted in the heire of the Diſſeiſor: So likewiſe if the Diſſeiſee enter upon the heire of the Diſſeiſor, and enfeoffe A. in fee, and the heire of the Diſſeiſor recover the whole eſtate, that ſhall alſo draw with it the meer right, and leave nothing in the Feoffee, &c. Co.ib.266.a.1.

poſſeſſionis draw *jus rietatis.*

y muſt be of the ge.

11 The Leſſor for years of a Meaſe, a Cloſe, and other certain lands in Dale, makes a feoffment of all, and gives livery in the Cloſe in name of Co.l.2.31 b. in *Bettiſworths* caſe.

of all, the Leſſe being at the ſame inſtant reſuing for the Peale; And it was adiudged, that this liberty was voide, as well for the Clerke as for the Peale, and other lands ſo demiſed; For when the Meſſuage with the land is entirely demiſed, the Meſſuage is the principal; becauſe that ſerues for the habitation of man, and in a Precipe ſhall be firſt demanded the land, as the more worthy, and the demand for vent auaile ſhall be made at the Meſſuage, as at the more principal and notorious place within the Demiſe; Vnleſſe the Meſſuage being the more worthy and the Principal, and the land but as acceſſory, without queſtion the poſſeſſion of the Peale by the Leſſee for yeares, at the time of the Iury made, is good poſſeſſion of the land demiſed with it, &c.

Co. l. 2. 68. a. 4. in *Tookers* caſe. Waſte is ma in the perſonalty.

12 All actions of Waſte be brought by thee, releaſe of all actions perſonall by one ſhall barre the other; for in Waſte the perſonalty is the principal. 9 hi. 5. 115. per Car. Vide ſupra 9.

Co. l. 56. 48. a. 2. in *Liſords* caſe. Land more worthy than trees.

13 If one make by deed inuented bargaine and ſale, giue and grant his Paſture of Dale, and all his trees growing thereupon to another, and the deed is not enrolled according to the Statute, in as much as the Paſture paſſeth not to the Bargainee, neither ſhall the trees paſſe; albeit they are granted by expreſſe words, and may paſſe without enrolment, and that a mans owne grant ſhall be taken moſt ſtrongly againſt himſelfe, &c.

Co. l. 11. 51. b. 4 in *Liſords* caſe. The like.

14 If after a man hath diſſeiſed me, I regain the poſſeſſion of the land; after my regreſſe into it, the Law ſhall adiudge, that the Franktenement hath continued in me ab initio; And therefore if the Diſſeiſee, or his Feoffee, or his Diſſeiſee cut downe any trees, or grafte, or ſow any graine, and depart them, or ſell them to another; yet after my regreſſe I may take them, whereſoeuer I ſhall finde them; becauſe that re-continuance of the land, as the principal, ſhall regaine my property in them as acceſſories; albeit they be rendred from off the land, for the carryeing of their choice cannot alter my property in them, &c.

Co. Inſt. pars 1. 8. a. 4. Fiſh, Doues, &c. incident to the free-hold

15 If a man buy Bees, Fiſhes, in Carpe, Mewes, Ferretes, &c. and put them in his ponds, and dieth; In this caſe the heire ſhall haue them, and not the Executors, for they ſhall goe with the Inheritance and the rather, for that they were at liberty, and could not be gotten without induſtry, as by Nets and other Engines; Otherwiſe it is, if they were in a trunke, or the like: Likewiſe Deere in a Parke, Conies in a Warren, and Doues in a Dooue-houſe, young and old, ſhall goe to the heire.

11 H. 4. 31. Wife with clothes.

16 An Aduulterer takes away another mans wife, and puts her in new clothes, the Husband may take the Wife with her clothes. Finch, 22.

10 El. 323. b. A bow with charters.

17 A bow ſealed with Charters ſhall goe to the heire with the Charters, and not to the Executors. Finch 22.

Finch 23. AMyne with the Ore.

18 A base ſpring, where there is Ore, ſhall be the Kings, for the worthineſſe of the Ore.

Litt. §. 478. Co. Inſt. pars 1. 278. b. 4. The right follows the poſſeſſion.

19 If a man be diſſeiſed by an Infant, who alienes in fee, and the Alienee dies ſeiſed, and his heir enters, the Diſſeiſee being ſtill within age, and then the Diſſeiſee releaſeth to the heir of the Alienee: In this caſe, if the Diſſeiſee enter upon the heir of the Alienee, as he may, he ſhall enjoy the land for euer; for a bare right ſhall neuer be left in the heir of the Alienee, but ſhall euer follow the poſſeſſion, &c. Likewiſe if a man maketh a gift in tail, the remainder in fee, the Tenant in taile dieth without iſſue, a Stranger intrudes, and he in the remainder being a Formedon, and recouereth by default, and maketh Feoffment in fee, the Intruder reuerſeth the recouery in a writ of deceipt, and entreth, he ſhall retaine the land for euer: So it is alſo when a Diſſeiſee dies ſeiſed, and a Stranger abates, and the Diſſeiſee reſeiſeth to the Heire, &c.

Here,

here, if the heire of the Diſſeiſor enter, he ſhall detain the land for ever: For, in all theſe caſes the right to the poſſeſſion ſhall draw the right of the land to it; neither yet ſhall any of theſe be relieved by bringing their writ of right, &c. And the rule to know, when the poſſeſſion ſhall draw the right of the land to it, and when not, is this; when the poſſeſſion is firſt, and then a right cometh thereunto, the entry of him that hath the right to the poſſeſſion, ſhall gain alſo the right, which (as appeares in thoſe caſes before put) followeth the poſſeſſion, and the right of poſſeſſion draweth the right unto it: But when the right is firſt, and then the poſſeſſion cometh to the right, albeit the poſſeſſion be defeated, yet the right ſhall remain: As if the Diſſeiſée enter upon the heire of the Diſſeiſor, albeit the heire may recover the poſſeſſion of the land againſt the Diſſeiſée in an Aſſiſe of Novel Diſſeiſin, or in a writ of Entry in the nature of an Aſſiſe; Yet ſhall the Diſſeiſée afterwards recover the land again from the heire in a writ of Entry en le per, of the diſſeiſin made unto him by his Father, or otherwiſe in a writ of Right; becauſe the meer right of the land did ſtill remaine in the Diſſeiſée, &c. So if a woman, that hath right of Dower, diſſeiſe the heire, and hee recover the land againſt her, yet ſhall he leave the right of dower in her, &c. Becauſe when the naked right is precedent before the acquiſition of poſſeſſion upon the defeaſible eſtate, then (in conſideration of Law) is the right more worthy than the poſſeſſion, but when ỳ poſſeſſion is before the right, then is the poſſeſſion more worthy, &c. according to the Rule, Quod prius eſt tempore, potius eſt jure. And this likewiſe holds true, when the meer right is ſubſequent, and transferred by act in Law, for there alſo albeit the poſſeſſion be recontinued, yet that ſhall not draw the naked right with it, but ſhall leave it in him: As if the heire of the Diſſeiſor be diſſeiſed, and the Diſſeiſor enfeoff the heire apparent of the Diſſeiſée, being of full age, and then the Diſſeiſée dieth, and the naked right deſcends to the heir, and the heire of the Diſſeiſor recovers the land againſt him, yet doth he leave the naked right in the heire of the Diſſeiſée: So if the Diſcontinuée of Tenant in taile enfeoff the Iſſue in taile of full age, and the Tenant in taile die, and then the Diſcontinuée recovers the land againſt him, yet doth he leave the naked right in the Iſſue: For in theſe caſes alſo, as before, the right although it ſeems to be ſubſequent to the poſſeſſion, yet is it indeed before it, in reſpect of the privity, viz. (in the firſt caſe) of bloud between the father and ſon, and (in the other caſe) of eſtate by force of the gift in taile; becauſe the right of the father is (by conſtruction of law) the right of the ſon, and the right of the Anceſtor is the right of the iſſue in the taile. 10.

Co. ib. 283. b. 3.

Littl. § 486. 48.

Co. ib. 266. a. 3.

ejus eſt ſolū, ejus eſt uſq; ad cœlum.

20 The earth is more worthy than the other elements, becauſe it was ordained for the habitation of man; and therefore it hath in Law a great extent upwards, not onely of water, but of aire, and all other things even up to heaven; for, cujus eſt ſolum, ejus eſt uſque ad cœlum, &c.

Co. Inſt. pars 1 4. a. 3.

Member of Parliament.

21 The perſon of a Member of Parliament is free from arreſts, becauſe the King and all his Realm have an intereſt in his perſon pro bono publico, and therefore the private commodity of any particular man is drowned in it, and ſhall not be regarded, &c.

Dyer 60. a. 20.

Caſe of an Houſe with Implements.

22 A leaſe for years of an houſe with divers Implements rendring rent, the Leſſor enters and makes feoffment, the Leſſee re-enters, and for rent arreare the Feoffée brings debt, and adjudged maintainable, albeit there was no privity, and this per 5 Henry 7. where the Deviſée brings Debt: And there the rent was not extinct, but onely ſuſpended, untill the Termor by his regreſſe revided the reverſion; Neither yet (in this caſe) ſhall there be an apportionment of the rent for the Implements, becauſe Magis dignum trahit ad ſe minus dignum. Vide Dyer 361. 15. 20 Eliz.

Dyer 212. 37. 4 Eliz.

Dyer 216. 55. 4 Eliz.

23 The Statute of 1 Mar. diſſolves the Court of Augmentations, by this the receivers office of the ſaid Court was alſo diſſolved. Sir Robert Cheſters caſe: Howbeit the ſee continued by a Proviſo in the ſame Statute. Receivers office.

63 *Acceſſarium Sequitur Principale.*

Co. Inſt. pars 1. 49. a. 3.

1 If an houſe or land belong to an Office, by the grant of the Office by deed, the houſe or land paſſeth, as belonging thereunto: So likewiſe if an houſe or chamber belong to a Corodie, by the grant of the Corodie, the houſe or chamber paſſeth, &c. An office or Corodie draweth land.

Co. ib. 56. a. 3.

2 If the Leſſe at will by good husbandry and induſtry, either by overflowing, trenching, or compaſſing of the meadows, or digging up the bushes, or the like, make the graſſe to grow in more abundance; Yet if the Leſſor put him out, the Leſſe ſhall not have the graſſe; becauſe the graſſe being the natural profit of the earth, ought to goe withall: So it is alſo, albeit he ſowes Hay-ſeed, and thereby increaſeth the graſſe, &c. Land draweth the profits.

Co. ib. 122. a. 2.

3 If a Manor be divided between Coparceners, and every one hath a part of the Manor without ſaying any thing of the Advowſon appendant, the Advowſon remains in coparcenary, and yet in every of their turns, it is appendant to that part, which they have, and ſo it is alſo if they make compoſition to preſent againſt common right, yet it remains appendant. An advowſon after partition remains appendant.

Co. ib 131. b. 2.

4 The King by his Prerogative (regularly) is to be preferred in payment of his duty or debt by his debtor before any ſubject, although the Kings debt or duty be the latter; and the reaſon hereof is, for that Theſaurus Regis eſt fundamentum belli, & firmamentum pacis: And therefore the Law gave the King remedy by the writ of Protection, Cum clauſula volumus, to protect his Debtor, that he ſhall not be ſued or attached, until he had paid the Kings debt; but hereof grew ſome inconvenience, becauſe many times to delay other men of their ſuits, the Kings debts were the more ſlowly paid: For remedy whereof, it was enacted by the Stat. of 25 E. 3. cap. 19. That the other Creditors might have their actions againſt the Kings Debtor, and alſo proceed to judgement, but not to execution, unleſſe that Creditor will take upon him to pay the Kings debt, and then he ſhall have execution for both the debts: Howbeit in ſome caſes the Subject ſhall be ſatisfied before the King: for (regularly) whenſoever the King is entitled to any fine or duty by the ſuit of the party, the party ſhall be firſt ſatisfied, as in a Decies tantum againſt a Juror, or an Embraceor; for there the real coſts damages ſhall be firſt ſatisfied, and then the Kings fine; becauſe this is as acceſſary to that: So likewiſe if in an action of Debt, the Defendant wage his law, and it is found againſt him; in that caſe he ſhall pay a fine to the King, but the Plaintiff ſhall be firſt ſatisfied: And ſo it is in all other like caſes; The like courſe was alſo taken in Bils preferred by Subjects in the Starre Chamber; For if coſts and damages were there recovered by the party, they were anſwered before the Kings fine, &c. Vide 189. 41. The Kings debt firſt paid, except in ſuits where a fine is due to the K. and damages to the party.

Co. ib. 138 a 4.

5 If Tenant in tail of a Manor, whereunto a Villein is regardant, enfeoffe the Villein of the Manor, and dieth, the iſſue ſhall have a Formedon againſt the Villein, and after the recovery of the Manor, he ſhall ſeiſe the Villein; Howbeit, before the recovery of the Manor he cannot ſeiſe the Villein, for that the Manor was principal, &c. A Mannor drawes the Villein.

Littl. § 219 Co. ib. 152. a. 3.

6 If the Donor or Leſſor of land grant his reverſion to another, &c. and the Tenant attorns the rent and ſervice paſſe by this word (reverſion) becauſe they are incident unto it; but by the grant of the rent the reverſion ſhall not paſſe; becauſe the Incident ſhall paſſe by the grant of the Rent and ſervice incident to the reverſion.

the Principal, but not the Principal by the grant of the Incident, Acceſſarium non ducit, ſed ſequitur ſuum principale.

Scire facias lies the land.

7 Where the Statute of 32 H. 8. cap. 5. concerning executions of lands, &c. in caſe the ſaid lands be evicted, giveth a Scire facias out of the ſame Court, from whence the former execution did proceed, &c. to have execution of other lands, &c. If the record be removed by writ of Errour into another Court, and there affirmed, the Tenant by execution, that is evicted, ſhall have a Scire facias (by the equity of that Statute) out of the Court, into which the writ of Errour was brought: becauſe the Scire facias muſt be grounded upon the record, and Acceſſarium ſequitur principale, &c. Co.ib.290.a.2.

Villein and Advowſon appendant to a Manor.

8 Albeit a man cannot at all be put out of poſſeſſion of his Villein in groſſe, nor directly of his Villein regardant; yet may he per obliquum, and by a meane be put out of poſſeſſion of his villein regardant to a Manor. For by putting him out of poſſeſſion of the Manor, which is the Principal, he may like wiſe be put out of poſſeſſion of the Villein regardant, which is but acceſſory; And ſo it is alſo of an Advowſon appendant to a Manor; And therefore by the grant of a Manor without ſaying cum pertinentiis, the Villein regardant, Advowſon appendant, and the like do paſſe; For if the Diſſeiſee ſhall gain them, as Incidents to the Manor, whoſe eſtate is tortious, A multo fortiori the Feoffee, who commeth to his eſtate by lawful conveyance, ſhall have them, as Incidents: And where the entry of the Diſſeiſee is lawful, he may ſeiſe the Villein regardant, or preſent to the Advowſon, &c. before he enter into the Manor; But it is otherwiſe where his entry is not lawful; And ſo are our ancient Authors to be intended, and a point much controverted in our books to be reſolved. Vide Dyer 5, 6. Co.ib.306.b.4. &c.

Attornment follows the land.

9 If the reverſion of Lands for life be granted, and Leſſee for life aſſigne over his eſtate, the Leſſee cannot attorn, but the Aſſignee, for the attornment followes the land: So likewiſe, if Leſſee for life aſſigneth over his eſtate upon condition, the Aſſignee ſhall attorn, becauſe he is Tenant of the land, &c. Co.ib.309.a.3. Litt. § 568.

The demeſne, &c. follows the Manor.

10 Attornment of the Tenant of a Manor to a Diſſeiſee of the Demeſnes ſhall diſpoſſeſſe the Lord of the rents and ſervices, parcel of the Manor, becauſe both Demeſnes, rents and ſervices make but one intire Manor, and the Demeſnes are the principal, &c. Co.Inſt.part 1. 303. a. 1.

A charge follows the land.

11 If there be 80 acres of Demeſne, which uſe to be divided yearly amongſt diverſe perſons by lot or otherwiſe, viz. thirteen acres thereof to A. 10 acres to B, &c. So as ſometime the 13 acres lie in one place, and ſometime in another, and ſo of the reſt: In this caſe, if A. being ſeiſed of theſe 13 acres in fee, grant a Rent-charge out of theſe 13 acres generally, lying in the Demeſnes of 80 without mentioning, where they lye particularly; There, as the eſtate of the land removes, the charge ſhall remove alſo. Co.ib.348.b.3.

Advowſon follows the Manor.

12 Tenant in tail of a Manor, whereunto an Advowſon is appendant, maketh a diſcontinuance, the Diſcontinuee granteth the Advowſon to Tenant in tail unto his heirs, Tenant in tail dieth, the iſſue is not remitted to the Advowſon; becauſe the iſſue had no action to recover the Advowſon, before he recovered the Manor, whereunto the Advowſon was appendant: And ſo it is alſo of all other Inheritances regardant, appendant, or appurtenant, a man ſhall never be remitted to any of them before he recontinueth the Manor, &c. whereunto they are regardant, appendant, or belonging, according to that of Bracton, Nulline poſt clamat droit en les appurtenances, ne en les acceſſaries, que nul droit ad en le principal: And alſo that of Bracton, Item, cuicunque poteſt, &c. quamvis jus habeat in tenemento & pertinentiis, primò recuperare debet tenementum, ad quod pertinet advocatio, & tunc poſtea preſentet &c. non ante, &c. Et de Co.ib.349.b.2. 5 H. 7.35. Co.l. 3. 3.a.4. in the Marq. of Wincheſters caſe.

hoc

hæc materia in Rotulo Sancti, Mich 3. H. 3. in com. Norf. de Tho. Bardolf, &c. But on the other ſide, if a man be remitted to the principal, he ſhall alſo be remitted to the appendant, or acceſſory, albeit it were ſevered by the Diſcontinuée, or other wrong-doer: And therefore if there be Tenant in taile of a Mannor, whereunto an Advowſon is appendant, and he enfeoffeth A. of the Mannor with the appurtenances, A. re-enfeoffeth the Tenant in taile, ſaving to himſelf the Advowſon, Tenant in taile dieth, his iſſue being remitted to the Mannor, is conſequently remitted to the Advowſon, although at that time it was ſevered from the
Co.ib.363.b.3. Mannor: So it is in the ſame caſe, if Tenant in taile be diſſeiſed, and the Diſſeiſor ſuffer an uſurpation; For here alſo, if the Diſſeiſor enter into the Mannor, he is likewiſe remitted to the Advowſon. 15.

Co.ib.355.b.4. 13 In any action for the recovery of the principal, together with the acceſſory, a man ſhall never releaſe the principal, & have judgment of the acceſſory: In an action of waſte, if the Defendant confeſſe the action, the Plaintiff may have judgement for the place waſted, and releaſe the damages; but he cannot have judgement for the damages, and releaſe the place waſted; becauſe the place waſted being in the realty is the principal, and the damages being in the perſonalty, are but as acceſſories; for without judgement for the principal; the Plaintiff can have no title to the acceſſory; but having judgement for the principal, he is thereby alſo entitled to the acceſſories, and therefore may releaſe them, &c. Judgement the princi draweth th acceſſories.

Co.ib.378.a.4. 14 A man letteth lands for life upon condition to have fée, and warranteth the land in forma prædicta, afterwards the Leſſée performeth the condition, whereby the Leſſée hath fée: Here, the warranty ſhall extend and encreaſe according to the eſtate; And ſo it is likewiſe, albeit the Leſſor had died before the performance of the condition; for then alſo the warranty ſhall riſe and increaſe according to the ſtate, and yet the Leſſor himſelf was never bound to the warranty, howbeit it hath relation from the firſt livery, &c. Warranty de creaſeth ac cording to th eſtate.

Co.ib.363.b.3. 15 If Tenant in tail be of a Mannor, whereunto an Advowſon is appendant, the Tenant in taile diſcontinueth in fée, the Diſcontinuée granteth away the Advowſon in fée, and dieth, the iſſue in taile re-continueth the Mannor by recovery, he is thereby remitted to the Advowſon, and ſhall preſent when the Church becometh void, &c. 12.

Co.ib.384.b.4. 42 E. 3. 6. per Finchden. 16 It hath been adjudged, that where two Coparceners made partition of land, and the one made a covenant with the other to acquit her and her heirs of a ſuit, that iſſued out of the land, the Covenantée alieneth; In this caſe the Aſſignée ſhall have an action of Covenant, and yet he was a ſtranger to the Covenant; becauſe the acquital as acceſſory did run with the land, which was the principal. Acquital fo lows the la

Co.ib.385.a.2. 17 If a man make a feoffment in fée of two acres to one, with warranty to him, his heirs and aſſignes, if he make a feoffment of one acre, that Feoffée ſhall vouch as Aſſignée; for the warranty, as acceſſory, follows the land, as principal: And therefore there is a diverſity between the whole eſtate in part, and part of the eſtate in the whole or in any part: As if a man hath a warranty to him, his heires, and aſſignes, and he make a leaſe for life, or a gift in taile, the Leſſée or Donée ſhall not vouch, as Aſſignée; becauſe he hath not the eſtate in Fée-ſimple, whereunto the warranty was annexed; but the Leſſée for life may pray in aide, or the Leſſée, or Donée may vouch the Leſſor or Donor, and by this meanes they ſhall take advantage of the warranty: But if a leaſe for life, or a gift in taile be made, the remainder over in fée, ſuch a Leſſée or Donée ſhall vouch as Aſſignée; becauſe the whole eſtate being out of the Leſſor, the warranty by conſequent doth follow it; and the rather, becauſe the particular eſtate and the remainder Warranty lows the f

et nec in judgement of Law (as to this purpose) maie but one Estate, &c.

nt of the nor paſſ- all liber- and inci- s.

18 If the King grant to one and his heires, Bona & Catalla felonum, & fugitivorum, & utlagorum, fines, amerciaments, &c. within ſuch a Town or Manor; In this caſe he cannot devile them to another, nor leave them to deſcend for a third part, according to the Statutes of 32 and 34 H. 8. of Wills; becauſe they are of no yearly value: For the firſt branch of the 34 H. 8. ordains, that the hereditaments deviſable by thoſe Statutes ſhould be of a clear yearly value, &c. And therefore thoſe Statutes extend not to ſuch kind of hereditaments. Nevertheleſſe, if a man be ſeiſed of a Manor, unto which a Leet, or Waife and Stray, or any other hereditament, which is not of any yearly value, is appendant or appurtenant; Here, by the devile of the Manor with the appurtenances, they ſhall paſſe as incidents to the Manor: For in as much as thoſe Statutes by expreſſe words enable him to devile the Manor, by conſequent they enable him to devile the Manor with all incidents and appendents unto it: And it was never the intention and meaning of the makers of thoſe Statutes, that when the Deviſor hath power to devile the principal, he ſhall not have power to devile that which is incident and appertinent unto it, but that the Manor, &c. ſhall be diſmembred, and fractions made of things, which by lawful preſcription have been united and annexed together, &c. Co. l. 3. 32. b. 3. in *Butler* and *Bakers* caſe. Per *Anderſon & Periam ſur conference eue ove divers auters Juſtices*, 25 Eliz. in *Bakers* caſe.

rincipal and acceſſorie.

19 If there be principal and acceſſory, and the principal is pardoned, or hath his Clergy, the acceſſory cannot be arraigned; For the Maxime of Law is, Ubi factum nullum, ibi forcia nulla; & ubi non eſt principalis, non poteſt eſſe acceſſarius. Then before there appears to be a principal, one cannot be charged, as acceſſory: but none can be ſaid to be principal, before he be ſo proved and adjudged by Law; and that ought to be by judgement upon verdict, or confeſſion, or by outlawry; for it ſufficeth not, that (in truth) there is a principal, unleſſe it appears to be by judgement of Law; And this is the reaſon, that when the principal is pardoned, or takes his Clergy before judgement, that then the acceſſory ſhall never be arraigned; becauſe it appeares not by judgement of Law that he was principal; and the acceptance of the pardon, or prayer of the Clergy may be an argument, but can be no judgement in Law, that he is guilty; Notwithſtanding, if the principal after attainder be pardoned, or hath his Clergy allowed, there the acceſſory ſhall be arraigned; becauſe it then appears judicially, that there was then a Principal. 28, 29. 34, 35. Co. l. 4. 43. b. 2. in *Syers* caſe. & Co. ib. 44. a. 1. in *Bibiths* caſe.

nd & trees vered.

20 When a man makes a leaſe for life or years, the Leſſee hath but a ſpecial intereſt or property in the trees (being great timber) as acceſſaries annexed to the land, ſo long as they are annexed unto it. But if the Leſſee or any other ſever them from the land, the property and intereſt of the Leſſee is thereby determined, and the Leſſor may take them as acceſſory things, which were parcel of his Inheritance, and in which the intereſt of the Leſſee is determined, &c. Co. l. 4. 64. b. 2. in *Herlakendens* caſe.

he like.

21 If A let my land for life, and after grant the trees, and after that the Leſſee dies, yet the Grantee cannot take them, as it was holden per totam Curiam, 21 H. 6. 26. b. becauſe at the time of the Grant, the Leſſee had a property in them, as acceſſaries annexed to the land, &c. Vide Mar. 25. Co. ib. 62. b. 4.

The like.

22 If trees (being great timber) be blown down by the winde, the Leſſor ſhall have them (for they were parcel of his Inheritance) and not the Tenant for life or years; But if they be rotten, without any great timber in them, the Tenant for life or years ſhall have them, &c. Co. ib. 63. b. 1.

uperſtitious es draw od uſes.

23 When certain ſummes are limited to ſuperſtitious uſes, and one uſe is ſeparated and divided from the other, there the finding of one of them Co. l. 4. 115. a. 2. in *Adams & Lamberts* caſe.

them onely shall not give all the land to the King by the Stat. of 1 E. 6. cap. 14. but onely the sum appointed to the superstitious use, which was employed within five years before the making of that Statute: but if one of the uses depend upon the other, there the finding of the principal or any part thereof shall give all the land to the King: As if land be given to the intent that an Obit shall be found in such a Chappel, and that upon the Obit 10 s. shall be distributed and employed to the Priest; and 6 s. 8 d. to divers poor persons, that shall be present at it, and the residue of the profits to the reparations of the Chappel: In this case, if the Obit be maintained in any part within the five years, although the 6 s. 8 d. be not employed to the poor men, nor any thing at all upon the reparations of the Chappel within the five years; Yet all the land shall be given to the King by the said Statute; because all the uses depend upon the first.

Co. lib. 5. 51. *Halls* case.

24 In suits in the Star Chamber (before the repeal of that Court) albeit the suit was for the King, and the offence such as the King might pardon; yet when the censure was once given, and damages given to the Plaintiff, then the Plaintiff had particular interest in them by the censure which the King would not pardon: But if the pardon had been obtained before the censure, there the pardon had discharged all; for then the Court could not have proceeded to any censure of the Principal, and by consequent neither of damages, which are but accessories: There is the same law of a pardon before sentence in suits depending betwixt party and party in the Court Christian for defamation, calling violent hands upon a Clerk, or the like; for these being suits, pro salute animæ, vel defamatione morum; are in truth suits onely for the King, although prosecuted by the party: And therefore if in such a suit the Plaintiff hath expended any costs, and the King before sentence pardons the Defendant, in that case the costs are lost, causa qua supra; It is other wise, if he be not pardoned till after sentence, for then costs being thereby given to the Plaintiff, he hath a particular interest in them, which the Kings pardon cannot frustrate, &c.

Upon censure or sentence, the King cannot pardon the damages or costs before censure or sentence, *contrà*.

Co. l. 5. 96. b. 3. in *Goodales* case, being adjudged in *Randals* case, 23, & 24 El. z. in the Court of Wards.

25 A. seised in fee of certain lands, by deed indented and enrolled according to the Statute, covenants with B. That if B. pay unto A. his heirs or Assignes 10 l. upon such a day at such a place, that then A. and his heirs will stand seised of the said lands to the use of B. and his heirs, A. having issue a son, makes his Will in writing, and makes C. his Executor, and withal deviseth that C. shall have the land during the minority of his son, and then dies, his son within age: In this case the question was, to whom after the death of A. the Tenant ought to be paid, and it was resolved, that it ought to follow the estate of the land, as an accessory unto it, and shall not be paid unto C. either as Termor or Executor, because C. could not be such an Assignée, as is meant by the words of the Covenant, having by the devise onely a particular interest in the land; Neither yet, if A. had granted the land for life or years, could any such Lessee have been Assignée in that case; because notwithstanding such grant the reversion still remained in A. and the possibility of having the land again as in his former estate, in case the condition were not performed: and therefore the payment thereof ought to be made to his son and heir; or unto the Assignée of the Covenantors whole estate, as if the Covenantor had made an absolute feoffment in fee, or else a gift in tail, or lease for life, with the remainder over in fee, then the Feoffee, Donee in tail, or Lessee for life, might be Assignées, to whom the Condition ought to be performed; because in these cases the Covenantor departed with the whole estate, unto which the Condition was annexed, &c.

A condition accessory to the estate.

26 Whereas

e eſtate
e not bar-
the rever-
r remain-
ot barred

16. Whereas by the Statute of 24 H. 8. cap. 20. It is provided that no common recovery had againſt Tenant in taile, who is party to the recovery, ſhall barre his iſſues; when the King hath the reverſion, &c. by this (Inclusive) the act preſerves the reverſions and remainders in taile of the Kings grant; for they cannot be barred, but when the eſtate taile, upon which they depend, is barred: And this is the reaſon, that when Tenant in taile is in of another eſtate, and ſuffers a common recovery as Tenant, this ſhall not bar any reverſion or remainder; becauſe it barreth not the eſtate of the Tenant in taile, being party to the recovery, and upon whoſe eſtate ſuch reverſion or remainder depends: For, quod non valet in principali, in acceſſoria ſeu conſequenti non valebit, & quod non valet in magis propinquo, non valebit in magis remoto. Co. l. 8. 77 b. 4. in the Lord *Staffords* caſe.

dinary ſub-
t to an a-
ne.

17 If before the Statute of Weſtm. 2. cap. 19. an action lay at the Common Law againſt the Deputies or Committees of the Ordinary (by the name of Executors) as appears by 38 E. 3. 26. & 42 E. 3. 2. A multo fortiori, an action ſhall lie by the Common Law againſt the Ordinary himſelf, who is the Principal, and from whom the Adminiſtrators do now derive their power. Co. l. 9. 39 b. 4. *Henſloes* caſe.

incipal and
ceſſary.

18 Albeit the Principal be attainted erroneouſly, either for errour in proceſſe, or becauſe the Principal being out of the realm, &c. was out-lawed, or becauſe he was in priſon at the time of the Out-lawry, &c. yet ſhall the acceſſary be attainted; for the attainder of the Principal ſtands good, until it be reverſed; and with this agrees the reſolution of all the Juſtices in the Kings Bench, 2 R. 3. 12. And in the 18 E. 4. 9. the Principal was erroneouſly out-lawed for felony, and the Acceſſory was taken, indicted, arraigned, convicted, attainted and hanged, and afterwards the Principal reverſed the Out-lawry, and was indicted and arraigned, and found not guilty, and thereupon was acquit: And in this caſe (foraſmuch as there can be no acceſſary, but where there is a principal, and here there was no principal) the heire of the acceſſary ſhall be reſtored to the lands which his Father had forfeited by that unjuſt attainder, either by entry or action at his election: For now upon the matter by act in Law the attainder againſt his Father is without any limit of Error utterly annulled; becauſe by reverſing the attainder againſt the Principal, the attainder againſt the Acceſſary, which depended upon the attainder of the principal, is ipſo facto utterly defeated and annulled; And this doth notably appeare in an ancient book, de tempore E. 1. tit. Mordanceſter, 46. where the caſe was this; A. was indicted of felony, and B. of of the receipt of A. A. ſloigns himſelfe, and is out-lawed, B. was taken, and put himſelfe upon inqueſt, and was found guilty, and was thereupon attainted and hanged, and the Lord entred as in his eſcheat: After which time A. came in, and reverſed the Out-lawry, and pleaded to the felony, and was found not guilty, wherey he was acquit; Hereupon the heire of B. brings a Mordanceſter againſt the Lord by eſcheat; and therein ſheweth all this matter, and ſo upon a Demurrer it was adiudged, that the heire ſhould recover ſeiſin of the land; For if B. had been living, he ſhould have gone quit by the acquital of A. becauſe B. could not be a receiver of a Felon, when A. was no Felon. 19. 29. 34, 35.

ipal and
ſſary.

19 The makers of the Statute of 4 & 5 P. & M. cap. 4. obſerving that by the Statute of 25 H. 8. cap. 3. Clergy was taken from the principal offender in the caſe of houſe-burning, &c. and not from any acceſſary, have provided that the acceſſary before the fact (in that and other caſes there provided for) ſhall be alſo outed of his Clergy, which was taken to be a good interpretation, made by that Parliament of all the Acts which concerned that matter; For if the Principal ſhall have his Clergy, it would be abſurd to take away Clergy from the acceſſary; becauſe Co. l. 11. 35. a. 1. in *Alexander Fowlers* caſe.

if the Principal hath his Clergy before ſaugement; the acceſſary ſhall not be arraigned. Vide ſupra 19.

N.B. 32. a. rimer. 30. If Baron and Feme preſent to an Advowſon in right of the Feme, which is appendant to the Manor of the Feme, and after the Baron alien an acre, parcel of the Manor, together with the Advowſon in fee to a ſtranger, and diſs. and after the ſtranger preſents, and then alienes the acre to another in fee, ſaving the Advowſon to himſelfe, and after the Church becomes void; Here, the Feme ſhall preſent, and if ſhe be diſturbed, ſhe ſhall have an Aſſiſe of Darrein preſentment; becauſe the Advowſon was ſevered from the acre: but if the Advowſon were appendant to the acre, then ought the Feme to recover the acre, before ſhe can preſent to the Advowſon. Advowſon appendant to an acre of land.

N.B. 47. d. 31. If a man recover in a Quare Impedit in the Common Pleas, and the record is removed by a writ of Error into the Kings Bench, and there affirmed: In that caſe he ſhall have a writ to the Biſhop there, and ought to ſue a Quare non admiſit againſt the Biſhop there, upon that record, &c. Quare non admiſit out of Kings Bench.

N.B. 107. m. 32. An Attaint may be ſued in the Common Pleas, if the record be there, which is the principal, or it may be ſued in the Kings Bench upon falſe verdict given in the Common Pleas; if the record be removed into the Kings Bench, &c. The like for an attaint.

id. 33. A recovery was had in an Aſſiſe brought in the Kings Bench, and afterwards the record was ſent into the Common Pleas, and the party ſued an Attaint upon that record in the Common Pleas: For the record is the principall, and the Attaint thereupon is acceſſary, which ſee in 11. Aſſiſe, 38. 2. Iquibus Caſe. The like.

F.N.B. 115. f. 34. If the Principal die before verdict given upon the acquital, or with a charter of pardon and pleaded, &c. In that caſe the acceſſory ſhall not have a writ of Conſpiracy, becauſe he is diſcharged by the death of the Principall, or by the charter of pardon given unto the Principall, &c. 19. 28. 29. Principal and Acceſſory.

Pl. Co. 99. b. 4. Matters of the Crown, &c. 35. Divers perſons were accuſed for murthering of a man, whereof ſome did actually murther him, and ſome fled, others ſtood by, viewing and abetting thoſe that committed the murther, and thoſe laſt were taken, and arraigned as principalls, &c. Wherewithall there was one Gir-din indicted, as acceſſary unto them all; but ſtanding mute of his arraignment, until he might be arraigned as Acceſſory to them all at one time; for he could not be arraigned as Acceſſory to them that were eſcaped, becauſe they were not yet attainted, &c. Principal and Acceſſory.

Co. Inſt. part 1. 96. b. Litt. § 137. 36. Although the Common or Statute-law give the remedy in ſome ſeculari (whether the matter be temporall or ſpirituall) the Conuſance of that cauſe belongeth to the Kings temporall Courts only, unleſſe the juriſdiction of the Eccleſiaſtical Court be ſaved, &c. As if an Abbot or Prior hold of his Lord by Divine Service certaine, and that ſervice is not performed, the Lord hath his remedy in foro ſeculari; for if the Tenant for not doing it, he ſhall upon his default render damages at the Common Law, viz. in the Kings Temporall Court for the not doing of it; And if iſſue be taken upon the performance of the Divine ſervice, it ſhall be tryed by a Jury of twelve men; becauſe albeit the ſervice be ſpiritual, yet the Seigniory, as alſo the damages to be recovered, are temporall: It is otherwiſe of Tenure by Frankalmoigne, which is always uncertain; for there the right being meerly ſpiritual, and the remedy only by the Eccleſiaſtical Law: the Conuſance thereof doth belong to the Eccleſiaſtical Courts, &c. Remedy in *foro ſeculari* for ſpiritual things.

Co. lib. 96. a. 4.

Co. lib. 11. 27. b. 3. in *Henry Pigots* caſe. 37. 18 E. 3. caſu ſimili, a Recognizance, in which a warrant of Attorney to deliver ſeiſin was inſerted, came ready to him that was to be the Feoffee, being a mere nullity, in the form of an eſtate tail, but was (indeed) a good warrant in fact, and the warrant was truly, as it was A letter of torney vo though re right to e unlettere

was writt, and both were ſealed and delivered, and ſeiſin given accordingly; Howbeit, in this caſe, the deed was adjudged void, becauſe read in another form, &c. and the warrant of Attorney (albeit it were truly read) was adjudged void alſo; becauſe it depended upon the feoffment, and had relation to the eſtate in fee. Vide 84. 8.

illeins e-
e, not the
before
overy of
Villein.

38 Servi fugitivi dicuntur eſſe in ſtatu libero, donec dominus verſus eos ſibi perquiſierit per legem terræ, nec habebit poteſtatem aliquam in eis vel liberis ſuis, terris, autaliis bonis ipſorum, donec corpus, quod principale eſt, diſtrationaverit. Bract. l. 1. cap. 10. § 3. fo. 7. a.

ondition or
enant runs
the land.

39 A leaſe is made to Baron and Feme by indenture, in which there is a Proviſo, that if they or their Executors ſhall be diſpoſed to ſell and alien the terme, that then the Leſſor ſhall have the firſt offer, he giving for it as much as another will give: And here, the queſtion was, whether this was a condition or a covenant, and the better opinion ſeems to be, that it is rather a condition than a covenant; Howbeit whether it be the one or the other, it runs with the land: So as albeit the Feme joyned not in the Indenture, nor was party thereunto, yet if ſhe ſurvive the Baron, ſhe ſhall hold the land charged with the condition or covenant, as an acceſſary thereunto: So in 38 E. 3. a feoffment was made by deed with divers covenants, and one of the Feoffees ſealed it, and the other not, but yet occupied the land, and ſurvived, and it was reſolved the Survivor ſhould be bound by the covenants and ſeale of his companion. Qui ſentit commodum, ſentire debet & onus. Vide M. 236. Dyer 13. 64. 28 H. 8.

A penalty for
not ſinging
Maſſe, &c.

40 An Abbot with the aſſent of his Covent grants for them and their Succeſſors to a man and his heires, to finde one of his Monks to ſing Maſſe, Mattens, and Veſpers every Holiday in ſuch a Chappel, and grants over, that toties quoties defectus fuerit in aliquo, &c. that they will forfeit to him and his heirs five pound. In this caſe, if by a failer of the ſervice, the nomine pœnæ of 5 l. be forfeit, the heire ſhall have an action of Debt for it, and not the Executors; for the heire having an inheritance in the penalty, it follows the nature of the land given to the religious houſe, as an acceſſary thereunto. Dyer 24. 149. 28 H. 8.

Diſſeiſor and
Diſſeiſee.

41 After regreſſe of the Diſſeiſee, the Diſſeiſee ſhall have the grain of the Diſſeiſor, albeit they be ſevered from the land by the Diſſeiſor, per totam Curiam, and in B. R. in Sayes caſe. Dyer 31. 219. 28 H. 8.

incipal and
ſſor.
e.

42 At the Common Law before the Statute of 2 & 3 Edw. 6. 24. in an appeal of Robbery, the Abettors were to be proſecuted in the ſame County where the Robbery was committed, and where the Principal was attainted, and not where the abetment was proved to be; But that Statute hath now ſetled it in the County where the Abettors ſhall be taken. Dyer 38. 50. &c. 29 H. 8.

Guardian.

43 If a man be ſeiſed of a Rent-charge, Rent-ſecke, Common of paſture, or ſuch like Inheritances, which lie not in tenure, and die, his heire within the age of fourteen years: In this caſe, the heire may chooſe his Guardian; But if he hold any land in Soccage, the Guardian in Soccage ſhall take into his cuſtody, as well the Rent-charges, &c. as the land holden in Soccage, becauſe he hath the cuſtody of the heir, which is the Principal. Co. Inſt. part 1. 87. b. 3.

ſurrender.

44 By ſurrender of the Letters Patents themſelves, the Duplicate thereof (though it bee alſo under the Great Seale) is alſo gone. Dyer 179. 44. 2 Eliz.

45 Vide Hob. 4. Muſgrave againſt Wharton.

64 Things accessary are of the nature of the Principal.

40 Ass. Pl. 25. — 1 A servant procureth another to kill his Master, this is no petty Treason in the servant, because it is but felony in the other, which is the principal. Finch 23. — No accessary.

7 H. 6. 19. b. — 2 A Parson grants an Annuity with a Nomine pœnæ, the Successor shall be charged with the Nomine pœnæ due in his Predecessors life, and not his Executors. Finch 23. — A Parsons successor chargeable.

26 H. 8. Dy. 7. Finch 23. — 3 The profits of the office of a Filizer, &c. cannot be put in execution upon a recognisance, Statute, &c. because the office it self, being an office of trust, cannot. — Profits of a Filizers office not chargeable.

26. El. Molins. Finch, 23. — 4 Tithe is not payable of Oaks usually topped and lopped (though it be every seven or eight years) for the branches are of the nature of the principal, viz. the Oake it self, for which no tithe is to be paid. — Lop not tithable.

Co. Inst. pars 1. 13. a. 1. — 5 A man seised as heire on the part of his Mother, maketh a Feoffment in fee to the use of him & his heirs: Here the use being a thing in trust and confidence shall ensue the nature of the land, and shall descend to the heir on the part of the Mother: So likewise if a man hath a Seignory as heire of the part of his Mother, and the tenancy escheat, it shall go to the heir of the part of the Mother: Also if the heir of the Mothers part of land, whereunto a warranty is annexed, be impleaded and vouch, and thereupon judgement is given against him, and also for him to recover in value, and doth before execution; Here, the heire of the Mothers part shall sue execution to have in value against the Vouchee; for, the effect ought to pursue the cause, and the recompence shall ensue the losse. — The effect ensues the cause, and the recompence the losse.

Co. ib. 42. a. 4. — 6 A man may have an estate for term of life determinable at will, As if the King by grant an office to one at will, and also grants a rent to him for the exercise of his office for the term of his life, this is determinable upon the determination of the office. — An estate for life determinable at will.

Co. ib. 53. a. 3. — 7 If Glasse-windows (though glassed by the Tenant himself) be broken down, or carried away, it is waste, for the glasse is part of the house: And so it is of wainscot, benches, doors, windows, fornaces, and the like, annexed or fixed to the house, either by him in the reversion, or the Tenant. — Waste.

Co. ib. 122. a. 1 — 8 Nothing can be properly appendant or appurtenant to any thing, unlesse the principal, or superiour thing be of perpetual subsistance and continuance; For example, an Advowson that is said to be appendant to a Manor, is in rei veritate appendant to the Demesnes of the Manor, which are of perpetual subsistance and continuance, and not to rents or services, which are subject to extinguishment and determination. — Advowson appendant to Demesnes.

Co. Inst. pars 1. 124. a. 4. — 9 If an Executor hath a Villein for years, and the Villein purchaseth lands in fee, & the Executor enters; In this case the Executor shall have the whole fee-simple of the lands; Notwithstanding because he hath the Villein en autre droit, as Executor to the use of the dead, it shall be assets in his hands, as the Villein is: And therefore note a diversity between the quantity of the estate, and the quality of it; for in this and the like cases, the Law respecteth not the quantity of the estate (for not only Tenant in taile and Tenant for life of a Villein, shall have the perquisite of the Villein in fee, but Tenant for years, and Tenant at will also shall have it in fee) but it principally respecteth the quality of the estate; For in what right the Executor hath the Villein, in the same right shall he have the perquisite: So it is also in the case of a Bishop, that hath a Villein in right of his Church; Also if a man hath a Villein in right of his wife, he shall have the perquisite also in her right: But if the purchase be after issue had, then the Baron shall have the perquisite to him and — A perquisite shall accrue to the Executor, Termor, &c.

and his heirs; because by the issue he is entitled to be Tenant by the Courtesie in his own right, &c.

ssse for y of par-

10 Littleton saith, § 219. that for a Rent-charge the Grantee hath his election either to bring his writ of Annuity, or to distrain, &c. Howbeit of a rent granted for owelty of partition, a writ of Annuity doth not lie; because it is of the nature of the land descended, and therefore for that the Grantee shall onely distrain, &c. Co.lib.144.b.4.

& redis-

11 He that recovers land in an Assise of Novel disseisin, whereunto there is a Common appendant or appertenant, and after is re-disseised of the Common, he shall have a re-disseisin of the Common; for it was tacitely recovered in the Assise. Co.lib.154.b.3.

arcenary ent for y, &c.

12 Where there be three Coparceners, and they make partition, and one of them grant 20 s. per annum, out of her part to her two sisters and their heirs for owelty of partition; there, the Grantees are not Joyntenants of this rent, but the rent is in nature of Coparcenary, and after the death of the one Grantee, the moity of the rent shall descend to her issue, in course of coparcenary, and shall not survive to the other, for that the rent doth come in recompence of the land, and therefore shall ensue the nature thereof; And if the grant had been made to them two of a rent of 20 s. viz. to the one ten shillings, and to the other ten shillings, yet shall they have the rent in course of coparcenary, and joyne in action for the same. Co.lib.169 b.2.

Coparcenary of rent.

13 If two Coparceners by deed indented alien both their parts to another in fee, rendring to them two and their heirs a rent out of the land, they are not Joyntenants of this rent, but they shall have the rent in course of coparcenary; because their right in the land, out of which the rent is reserved, was in coparcenary. Co.lib.169.b.4.

Joyntenancy for life, and several Inheritances.

14 If land be given to two men and the heirs of their two bodies, they have joynt estates during their lives, and afterwards several Inheritances; and therefore if one of them have issue and die, the other shall have all the land during his life by right of Survivor, but after his death that issue shall enjoy his fathers part: and if that issue die without issue, the Donor shall enter into that moity, and not the issue of him that survived; For in as much as originally the inheritance was several, the reversion is also several; And therefore upon the several determination of the estate in tail the Donor may enter; for as upon one joint and intire gift or lease, there is one joint and intire reversion, so upon several gifts or leases, there be several reversions, &c. Co.lib.183.b.4.

nt reserved ures to both e Joyntenants.

15 If two Joyntenants make a lease for life, reserving a rent to one of them, the rent shall accrue to them both; because the reversion inherent unto the rent is incident, remains still in jointure; unlesse the reservation be by deed indented, and then he onely, to whom it is reserved, shall have it, &c. Vide Dyer 308. 75. Winters case. Co.lib.192.a.3.

mages shal several a-ongst Co-rceners.

16 If three Coparceners recover land and damages in an Assise of Mordancester, albeit the judgement be joint, viz. that they shall recover the land and damages; yet the damages being accessory (though personal) do in judgement of Law depend upon the Free-hold, being the principal, which is several; And although the words of the judgement be joint, yet shall it be taken for distributive; And therefore in that case if two of them die, the entire damages do not survive, but the third shall have execution according to her portion, &c. Co.lib.198.a.4.

ght may forfeited.

17 The right of a particular estate (which is as accessory) may be forfeited as well as the particular estate it selfe (which is the principal) and he that hath but a right of a Remainder, or reversion, shall take benefit of such a forfeiture: As if Tenant for life be disseised, and levy a fine to the Disseisor, he in the reversion or remainder shall presently enter upon the Disseisor for the forfeiture: So it is also, if the Lessee after Co.lib.252.a.2.

the

the diſſeiſin had levied a fine to a ſtranger; For, albeit to ſome reſpects, Partes finis nihil habuerunt, yet is it a forfeiture of his right.

Co.lib.252.b.1. 18 The entry of a man to re-continue his inheritance or free-hold, muſt inſue his action for recovery of the ſame; As if three men diſſeiſe me ſeverally, of three ſeveral acres of land, being all in one County, and I enter in one acre in the name of all the three acres, this is good for no more, but for that acre which I entred into; becauſe each Diſſeiſor is a ſeveral Tenant of the free-hold, & as I muſt have ſeveral actions againſt them for the recovery of the land, ſo mine entry muſt be ſeveral; And ſo it is, if one man diſſeiſe me of three acres of ground, and letteth the ſame ſeverally to three perſons for their lives, &c. There the entry upon one Leſſee in the name of the whole, is good for no more, than that acre, which he hath in his poſſeſſion: But if the Diſſeiſor had letten ſeverally the ſaid three acres to three perſons for years, there the entry upon one of the Leſſees, in the name of all the three acres, ſhall re-continue and reveſt all the three acres in the Diſſeiſee; for that the Diſſeiſee might have had one Aſſiſe againſt the Diſſeiſor, becauſe he remained Tenant of the Free-hold for all the three acres; and therefore in that caſe one entry ſhall ſerve for the whole: So if one diſſeiſe me of one acre at one time, and after diſſeiſe me of another acre in the ſame County at another time, in this caſe my entry into one of them in the name of both is good; for that one Aſſiſe might be brought againſt him for both the Diſſeiſins: But if I enfeoff one of one acre of ground upon condition, and at another time I enfeoff the ſame man of another acre in the ſame County upon condition alſo, and why the conditions are broken, and entry into one acre in name of both is not ſufficient; for that I have no right to the land, nor action to recover the ſame, but a bare title, and therefore ſeveral entries muſt be made into the ſame, in reſpect of the ſeveral conditions: But an entry into one part of the land in the name of all the land ſubject to one condition is good, although the parcels be ſeveral, and in ſeveral Towns: And ſo note a diverſity between ſeveral rights of entry, and ſeveral titles of entry, by force of a condition.

Several d fin muſt ſeveral en and actio

Co.lib.387.a.4. 19 If Tenant in Fee-ſimple, that hath a warranty for life, either by an expreſſe warranty, or by Dedi, be impleaded, and vouch, he ſhall recover a Fee-ſimple in value; albeit his warranty were but for term of life; becauſe the warranty extended in that caſe to the whole eſtate of the Feoffee in Fee-ſimple: But if Tenant in taile make a leaſe for life, the remainder in fee, &c. And a collateral Anceſtor confirms the eſtate of the Tenant for life with warranty for term of life, of the Tenant for life, and dies; In this caſe, if the Tenant for life be impleaded and vouch, he ſhall recover in value but an eſtate for life, becauſe the warranty doth extend to that eſtate onely.

Warranty.

Co. Inſt. pars 1.392.b.4. 20 If a man make a gift in taile with warranty, this warranty is alſo entailed; And therefore a releaſe made by Tenant in taile of the warranty ſhall not barre the iſſue, no more than his releaſe ſhall barre the iſſue to bring an attaint upon a falſe verdict, or a writ of Errour upon an erroneous judgement given againſt the father; Neither yet can his gift barre the iſſue of the deed, that created the eſtate taile, nor of any other deed neceſſary for defence of the title; For theſe are acceſſaries to the eſtate taile, and are as firmly entailed, as the eſtate it ſelf, &c.

All acceſſar to an eſtate taile are in- tailed, as w as the eſtat ſelfe.

Co.l.8.79.b.4. *Wiat weilds caſe.* 21 A man is ſeiſed of a Meſſuage and forty acres of land, unto which he can preſcribe to have Common in 200 acres of waſte belonging to the Mannor of Dale, for all the cattle levant and couchant upon the ſaid Meſſuage and 40 acres: In this caſe, if he ſell five acres, parcel of the forty (whether the Common were appendant or appurtenant) the Alienée ſhall enjoy a proportionable part of the Common, as belonging to the ſaid five acres: For albeit at the beginning, there was but one Common

Common a portionable.

mon attending upon ancient mes, yet in as much as it is attendant upon a tenancy, that is severable, and upon every part thereof, the Common shall be severable as well as the tenancy; so that the Assignee of part of the tenancy shall enjoy also a part of the Common appurtenable to that part of the tenancy, &c. So likewise, if he that hath such a Common appertaining to his land, as aforesaid, purchase parcel of the land to another, the Lesse shall have common for his beasts in respect of his land, &c.

22. S. and his wife bring an action of Covenant against B. upon Covenant made by Indenture tripartite, to which B. covenants with the Plaintiffs, and also with S. and his wife, Et cuilibet eorum hæredi, & successori quilibet & qualibet eorum, that he was sole seised of the land, &c. And in this case it was adjudged, that the action would not lie singly for the Plaintiffs only, but S. and his wife ought also to have joyned in their action; because as their interests in the land was joynt, so also was the Covenant. And therefore these words, cuilibet & qualibet eorum, &c. were void, and signifies nothing. It is otherwise, when the interests are several; for then the covenants which have relation thereunto are also several; As if a man demise Blackacre to A. Whiteacre to B. and Greenacre to C. and covenant with them, & quilibet eorum, that he is right owner of them, &c. Here, in respect of the several interests it is held these words (& quilibet eorum) the Covenant is more beneficially intended as if he had demised these acres unto them joyntly, the Covenant should have been joyntly in respect of their joynt interests, &c. Co. l. 5. 18. b. *Slingsbies* case.

23. A Lord of a Leet cannot distrain for the certainty belonging to the same Leet; unless he can prescribe, that he and those whose estate he hath, have used to distrain for it: because the certainty being a gain against common right, and only for the private gain of the Lord, he cannot have it without prescription; for (by consequent) no sufficient prescription can have pre-existent right to the certainty it self which the principal is, for neither shall he have without prescription good warrant to distrain for it, which is Accessary. And for the same reason it is, that the Lord of a Court Baron shall not distrain for an Amerciament there without prescription; for that the Court it self (which is the principal) consists in prescription. It is otherwise in a Court Leet, wherein the Fines and Amerciaments of that Court do belong in interest of common right, &c. Co. l. 11. 44. b. 2. Rol. Rep. 80. in *Godfrey's* case.

24. If a man acknowledge in Court Christian, that he owes unto one that 5 l. to be paid at a certain day, and after the day is run, he shall not be sued in Court Christian for that Debt, even tho he hath had a prohibition and an attachment thereupon, &c. But if by reason of a testimonie or a Testament a man acknowledgeth a debt in Court Christian, if the debt be not paid accordingly, he may be sued for it there: for a prohibition lyeth not in that case; because that Court having power to take a conusance of matters matrimonial and testamentary, which are the principal, it may likewise take Conusance of debts acknowledged thereupon, which are accessary, &c. F. N. B. 41. b.

25. If a man cause one as Principal to be appealed of murther or felony, and another as Accessary unto him, and after he is non-suited in his appeal: In this case the Accessary shall have a writ of Conspiracy, as well as the Principal. F.N.B. 115. a.

26. If a Principal and one as accessary are indicted of felony, and one taken and arrested, and the Principal is acquit; thereby the Accessary is also discharged, and the Accessary shall have thereupon a writ of Conspiracy against them, that conspire to indict him, &c. F.N.B. ibid.

27. If a man make a Statute Merchant in 200 l. payable at divers days, if he fail of payment at any one of the days, the party to whom the recognisance was made, may have execution for that day, and shall not F.N.B. 130. h. & 131. a. Co. l. 8. 153. a. in *Altham's* case.

not ſay execution till all the days of payment be paſt; becauſe a Statute ſavers of the realty, and partakes of the nature of the land, and the profits thereof which are ſeverable: It is otherwiſe of an obligation, which is ſo to be diſcharged at ſeveral payments; for that is meerly perſonal, and intire, &c. Co. l. 47. b. & 192. b.

Co. l. 10. 128. b. 3. in *Clans* caſe.

F.N.B. 9. a.

28 A writ of Dower lyeth as well for a thing appendant or appurtenant to land, as for the land it ſelf, &c. Dower.

F. N. B. 50. a.

29 If a Parſon hath a Chappel annexed to his Parſonage, to which Chappel there is Glebe appurtenant, the Parſon ſhall have a Juris utrum as well of that, as of Glebe belonging to the Parſonage it ſelf. Glebe.

Co. l. 5. 81. b. 3. in *Fords* caſe. Co. l. 8. 153. a. in *Altihams* caſe. & l. 10. 128. b. 3. in *Clans* caſe.

30 If I ſell unto you any thing for 100 l. to be paid by 20 l. per annum, in five years, I ſhall not have an action of Debt, until all the dayes be incurred, becauſe it is but one intire contract; But if a man make a leaſe of lands for five years, rendring each yeare 20 l. there in caſe of a leaſe of land for years, the years are ſeveral, and the land and the profits thereof ſeverable: And therefore the rent being ſeverable as well as the land, &c. he ſhall have an action of Debt for each year, &c. as it was adjudged in 25 E. 3. 8. Co. Inſt. pars 1. 47. b. Annual ſum not ſeverable rent otherwiſe.

Co. l. 2. 66. b. 4. in *Tookers* caſe.

31 There are two Joyntenants for life, the reverſion of the grants over his eſtate in fee, one of the Joyntenants onely doth attorn, this is a good attornment of both to veſtle the reverſion in the Grantee; becauſe the eſtate of joynt Leſſees is intire (for every Joyntenant is ſeiſed per amy & per tout) and by conſequent the reverſion, which is dependant and appendant upon ſuch an eſtate, is intire alſo, &c. Attornment by one Joyntenant ſufficeth.

Co. Inſt. pars 1. 133. b.

32 Some actions follow the nature of thoſe, whereon they are grounded, as the writs of Error, Attaint, Scire Facias, and the like. Actions.

Co. l. 4. 47. b. in *writs* caſe

33 The Feme ſhall not have more appeals than one for the death of the Husband; but ought to joyn all, that ſhe will charge, in one and the ſame writ, and ſo alſo ought ſhe to declare againſt all in one and the ſame Court; for as the murther or death is onely one, ſo ought the Writ and Count to be one alſo: And therefore if ſhe bring an appeale of death againſt divers, and all but one make default, yet the Plaintiff ought to bring his writ, and likewiſe to count againſt all, &c. The wife ſhal have but one appeal.

Pl. Co. 72. b. in *Roſſes* caſe.

34 If an execution be ſued of the body and of the land, and afterward the Conſtor enfeoffs the Conſtee of parcel of the land, or ſurrenders parcel of the land unto him, or the Fee-ſimple of parcel thereof deſcends upon him; In all theſe caſes, both body and land are diſcharged; for by the execution againſt body and land, the land was de facto charged, and ſo became debtor, and by the feoffment, ſurrender, or deſcent, the land was alſo diſcharged; becauſe a diſcharge of part of a thing in execution is a diſcharge of all, be it by act of the party, or by act of Law; for the duty being perſonal and intire, the execution (as acceſſary thereunto) is intire alſo, &c. Execution diſcharged by purchaſe of part of the land.

Co. l. 10. 109. b. 4. in *Legats* caſe.

35 If a Bailiff or other officer of the Kings Manor ſuffer any to intrude upon any parcel of the Demeſnes, ſo that nothing is anſwered for it in particular unto the King, but onely the ancient rent of the Manor, &c. Yet that parcel ſo intruded upon, ſhall not in Law be ſaid to be concealed, nor paſſe by any ſuch name in any grant of it from the King; For, the Manor it ſelf being in charge and accompt, by conſequent every part thereof is ſo alſo; And Turpis eſt pars, quæ non convenit cum ſuo toto. No concealments.

Co. Inſt. pars 1. 337. a. 4.

36 If two Joyntenants within age make feoffment in fee, they may enter joyntly in theſe lives, or joyn in a writ of right, becauſe entry or a writ of right follow the nature of the eſtate, which is joynt; but they ſhall not joyn in a Dum fuit infrà ætatem, becauſe that follows the nature of their ſeveral perſons, which (in that caſe) are the principals, &c. for Joyntenants ſhall joyne in action.

the nonage of the one is not the nonage of the other, &c.

Rent partable as the land.

37 If Gavelkind land be let for years rendring rent, the rent is partable as the land; It seems to be otherwise of a Rent-charge granted out of the land, because that is collateral to the land, and intire: per Fitz-herbert. Dyer 5. b. 1. 26 H. 8.

Principal and Accessary.

38 Pikris Sanders was accessary to the murther of her husband, and because it was but murther in the principal that killed him, it could not be petty Treason in his wife; It is otherwise, where the wife conspires with her servant to kill her husband, who doth it in the absence of the wife, yet this is petty Treason in the wife, being but accessary, because petty Treason in the servant. Dyer 153. 103. 8 Eliz. Dyer 332. 25. 16 Eliz.

65 A mans own words are void, when the Law speaketh as much, or otherwise. *Vide M.* 41. 6, 7, 9.

New invented settlements void.

1 If lands are given to a man to have and to hold to him and his heirs on the part of his Mother, yet the heirs of the part of the Father shall inherit; for no man can institute a new kind of Inheritance, not allowed by the Law, and the words, On the part of his Mother are void: So if lands are given to a man, and to his heirs male, the law rejecteth this word, Male; because there is no such kind of inheritance, &c. Co. Inst. pars 1. 13. a. 2.

No execution of the estate to the use.

2 By the Statute of Westm. 2. cap. 1. the land is as it were appropriated to the Tenant in tail, and to the heirs of his body, and therefore if an estate be made, either before or since the Statute of 27 H. 8. cap. 10. (of uses) to a man and the heirs of his body, either to the use of another and his heirs, or to the use of himself and his heirs, this limitation of use is utterly void; For before the said Statute of 27 H. 8. he could not have executed the estate to the use: And so it was adjudged in an Ejectione Firmæ, between John Cooper Plaintiff, and Thomas Franklin, and others Defendants, P. 14. Ja. in B. R. Co. ib. 19. b. 3.

A mans heirs remain in him during his life.

3 If a man make a gift in tail, or a lease for life, the remainder to his own right heirs, this remainder is void, and he hath the reversion in him; For the Ancestor during his life, beareth in his bodie (in judgement of Law) all his heirs; and therefore it is truly said, that Hæres est pars antecessoris: And this also appeareth in a common case; for if land be given to a man and his heirs, all his heirs are so totally in him, as he may give the land to whom he will; So it is also if a man be seised of lands in fee, and by Inventure make a lease for life, the remainder to the heirs male of his own body, this is a void remainder; for the Donor cannot make his own right heir a purchaser of an estate taile without departing with the whole estate out of him, but by departing with the whole estate he may: As if a man make a feoffment in fee to the use of himself for life, and then to the use of the heirs male of his body, this is a good estate taile executed in himself, and the limitation is good by way of use; because it is raised out of the estate of the Feoffees, which the Feoffor departed with, &c. Co. ib. 22. b. 4. *Bingbams* case. Co. l. 2. 91. b. 2. & in *Mitfords* case. T. 31 El. ibid. recite *cum plur. ab author.*

...hion in ...e of a ...inder.

4 If a man make a feoffment in fee to the use of himself in tail, and after to the use of the Feoffee in fee; In this case, the Feoffee is in by the Common Law, notwithstanding the expresse words of a remainder, and the Statute of uses, 27 H. 8. cap. 10. For he hath still a reversion but in nature of a remainder, and yet the Feoffor hath the estate tail executed in him by the same Statute. Co. Inst. pars 1. 22. b. 4.

...y of a ...g.

5 If a man deliver a writing sealed to the party to whom it is made, as an escrow to be his deed upon certain conditions, &c. this is an absolute delivery of the deed, being made to the party himself; for the delivery is sufficient without speaking of any words (otherwise a man that is mute could not deliver a deed) and tradition is onely requisite; and Co. ib. 36. a. 1. Co. lib. 9. 137. a. 1. in *Thoroughgoods* case.

therefore when the words are contrary to the Act, which is the delivery, the words are of none effect; For, non quod dictum, sed quod factum est, inspicitur: Sam Bargot though there hath been variety of opinions, yet in the Law now settled, agreeable to judgments in former times, and so it was resolved by the whole Court of Common Pleas, H. 12. Jac. That it may be delivered to a Stranger as an Escrow, &c. because they have act of delivery to him without words which do nothing, &c.

Co. ib. 51.b.3. Litt. § 64. 6 An Exchange, if the Estates be not equal, albeit the parties agree, yet is the Exchange void; for the agreement of the parties cannot make that good, which the Law maketh void. Exchange.

Co. ib. 53.b.2. 7 If a man make a lease for life, and by deed grant, that if any waste or destruction be done, that it shall be redressed by neighbours, and not by suit, or plea; Yet in this case, an action of waste shall lie: because the place wasted cannot be recovered without a plea. Waste.

Co. ib. 62.b.3. Litt. § 82. 8 If a man let lands to another to hold to him and his heirs at the will of the Lessor, these words (to the heirs of the Lessee) are void; because in this case, if the Lessee die, and his heir enter, the Lessor shall have an action of Trespass against him, and that before the Lessee entered; for that by the death of the Lessee, the lease is absolutely determined. Lease to one and his heirs at will.

Co. ib. 66.b.2. 9 In the making of Homage the saving for other Lords (Salve la foy, que ie doy, &c. & a mes autres Seigniors.) is not of necessity, but only added for explanation sake; For, the homage is referred only to the Tenements, which the Tenant holdeth of that Lord, to whom he doth the Homage. Homage.

Co. ib. 191.a.2. 30 Ass. Pl. 8. Co. Lit. 73.b.1. *Boroughs* case. 10 Lands given to two, Et uni eorum diutius viventi, they make partition, and one of them grants his part to a Stranger; In either of these cases if one of them die, the Lessor shall have again the entry of him that dieth; for, Uni eorum diutius viventi, are but void words; because (without them) the Jointenant by course of Law is to have all, in case he survive. Finch 24. Jointenancy.

Co. ib. 212.b.4. 11 Where the condition is certain (viz. for the payment of 20 l. or the like) the Obligor or Feoffor cannot at the time appointed pay a lesser sum in satisfaction of the whole; because it is apparent, that a lesser sum of money cannot be a satisfaction for a greater. Payment of a lesser sum.

Litt. § 345. Co. ib. 213.a.2. 12 If a man enfeoff another upon condition, that he and his heirs shall render unto a Stranger a yearly rent of 20 s. &c. and that if he or his heirs fail to pay it, that then it shall be lawful for the Feoffor and his heirs to re-enter. Albeit this reservation be by indenture, wherein the 20 s. reserved is named to be an annual rent, yet is it never the more a rent for that; because although the Stranger be failed of it, and then failer is made, yet can he not have Assise for it; and for that the estate moved not from the Stranger, neither yet was he party to the deed, &c. But such a sum reserved in that case, is only a pain set upon the Tenant, which if he pay not, &c. the Feoffor may enter, &c. A sum reserved to a Stranger, no rent.

Co. ib. 224.b.2. 13 If a gift in tail be made to a man, and to the heirs of his body, and if he die without heirs of his body, that then the Donor and his heirs shall re-enter, this is a void Condition; For, when the issues fails, the estate determineth by the express limitation, and consequently the adding of the Condition to defeat that, which is determined by the limitation of the estate, is void; and in that case the wife of the Donee shall be endowed, &c. Issue failing the Donor may enter.

Litt. § 446. Co. ib. 265.a. 14 These words in a release, Que quidem sic dimisi in futurum habere potestatem, are void in Law: For no right passeth by a release, but only the right which the Releasor hath at the time of the release made; for if there be father and sonne, and the father is disseised, and the son, living the father, releaseth by his deed to the Disseisor all the right that he hath, or Release of entry into void.

or may hereafter have in the land, without clause of warranty, &c. and after the father dies, &c. the son may lawfully enter upon the possession of the Disseisor; notwithstanding such release; because he has no right in the land in the life of his father, but the right descended unto him after the release made by his fathers death, &c.

A perpetuity void.

15 A man gives land to Mary and Joane (two sisters) Et hæredibus de corporibus eorum legitime procreatis (by which they had a joynt estate for life, and several Inheritances) and the Donor intending, that neither of them should break the joynture, but that the Survivor should have all per jus accrescendi, added this clause, sub hac forma, quòd illa, quæ illarum diutius vixerit, tenebit terram illam integram, &c. But in as much as his intent was contrary to Law; for that cause, if the joynture were severed by fine levied, the Survivor shall not have the part so severed, by reason of the said clause, which he did insert of his own conceit and imagination repugnant to law and reason, &c. Co. l. 1. 84. b. 3. in *Corbets* case. *per Anderson.* 8 Ass. Pl. 33.

A will repugnant, void.

16 For the construction of Wills, this rule was taken by the Justices in the argument of Corbets case in the first Report, that an estate, which by the rules of the Common Law cannot be conveyed by act executed in the life of the Devisor by advice of Counsel learned in the Law, cannot be devised by his last Will, he being intended at that time to be inops consilii: As if a man devise land to another for ever, there the Devisee hath fee; because such an estate may be conveyed by act executed, &c. But if he devise farther, that if the Devisee doth not such an act, that another shall have the land to him and his heirs, this were void; because such a limitation, if it were by act executed, would be void, &c. Co. l. 1. 85. b. 4. in *Corbets* case.

An authority revocable.

17 If a man be bound in an Obligation, to stand to, abide, observe, &c. the rule, arbitrement, &c. yet he may countermand it; for a man cannot by his act make an authority, power, or warrant to be uncountermandable; which by the Law, and of its own nature is countermandable; As if I make a letter of Attorney to make Livery, or to sue an action in my name, or if I assigne Auditors to take an accompt, or make a Factor, or submit my selfe to an arbitrement, albeit these are made by words expresly irrevocable, or if I grant, or am bound, that all these shall stand irrevocably, yet they may be revoked: So if I make my testament irrevocable, yet may I revoke it; for my act or my words cannot alter the judgement of the Law, and make that irrevocable, which of his own nature is revocable, &c. And therefore if I be bound by obligation to stand to the award of I. S. albeit if I discharge that arbitrement, I shall forfeit my bond; Yet is my submission in that case revocable; and so is the book in 5 E. 4. 3. b. which seems to be contrary in that point, well reconciled, &c. Co. l. 8. 82. a. 2. in *Vinyers* case.

Restraint to demise, void.

18 The Charter of the Incorporation of Suttons Hospital restrains them to alien or demise, but in a certain forme; this is onely a precept and ordinance testifying the Kings desire, but binds not in Law: So likewise in another part of the same Charter, the exemption of the Ordinaries jurisdiction is but a clause declaratory; For being a Lay-corporation, it neither can, or ought to be visited, &c. Co. l. 9. 30. b. 4. in the case of *Suttons* Hospital.

A defective barre.

19 In the case of Monopolies in the 11 Report, the Defendant being charged by the Plaintiffe to have sold Cards, &c. contrary to the priviledges granted to the said Plaintiff by Letters Patents of Qu. Eliz. &c. puts in this barre, that the City of London is an ancient City, and that within it, time out of mind, &c. there hath been a society of Haberdashers, and that within the said City there was a custom, Quod quælibet persona de societate illa, usus fuit & consuevit emere, vendere & liberè merchandizare omnem rem & omnes res Marchandizabiles infra hoc regnum Angliæ de quocunque vel quibuscunque personis, &c. and pleaded farther, that Co. l. 11. 85. b. 3. in the case of Monopolies.

he was Civis & liber homo de civitate & societate illa, and that he sold playing Cards, &c. as was lawful for him to do, &c. But the Justices gave no regard to this Barre, because it was no more than what the Common Law would have said, and then no such particular customs ought to have been alleaged; For, in his, quæ de jure communi omnibus conceduntur, Consuetudo alicujus patriæ vel loci non est alleganda, and with this accords 8 E. 4, 5. &c.

Dyer 19. b. 115. 28 H. 8.

20 The Lessor covenants, that the Lessée shall have sufficient Hedg-bot by the assignment of his Bailiff; In this case, for as much as this covenant is in the affirmative, and floweth from the Lessor, and is no more than what the Law gives a Lessée privilege to do, per Baldwin and Fitzherbert, the Lessée may take Hedg-bot without assignment. Tamen quære, for Shelley is of another opinion, because Cujus est dare ejus est disponere, & Modus & conventio vincunt legem, and the Lessée also seems to be bound by the acceptance of the lease upon those termes, Ideo quære. Howbeit, if I let to one two acres of Meadow, and that it shall be lawful for the Lessée to cut the grasse by the assignment of the Lessor; yet the Lessée may cut the grasse without my assignment. Lessee may take boots without assignment.

Dyer 279. 45. 2 Eliz.

21 A man seised in fée of lands in Burrough English since the Statute of 27 H. 8. makes a feoffment in fée to the use of himself, and the heirs males of his body engendred, Secundum cursum communis legis, and after dies seised accordingly, having issue two sons; In this case, the youngest sonne shall have the land, notwithstanding the words before. Vide 26 H. 8. 5. Burrough English.

Dyer 230. 57. 6 Eliz.

22 The Lord by Knight-service releaseth and confirms to the Tenant to hold by a Spurre; In this case, the new reservation is void upon the estate before created; Howbeit the termes by fealty still remains. Tenure.

Dyer 238. 36. 7 Eliz.

23 A Coroners Inquest inicts a man of murther, & quòd fugam fecit, and upon his arraignment he is acquit, and another found guilty, ut oportet, and it was also found, that he did not flie, yet he shall forfeit his goods; for upon his arraignment in this case, the flight shall not be given in charge, because they were before forfeited by the Coroners Inquest. Coroners Inquest.

Hob. 5. *Crow* and *Edwards*.

24 In debt upon an obligation of 60 l. for the payment of 31 l. 10 s. at Coventry, issue was taken, that the money was paid at Coventry, and put by consent of parties, and a paper Rule of Court, the issue was tried at London, and found for the Plaintiff, and judgment given; Howbeit, upon a Writ of Errour brought in the Exchequer Chamber the judgement was reversed; for consent of Parties cannot change the Law. Trial in forreign County.

Hob. 13. Sir *Daniel Norton* and *Simmes*.

25 If a Sheriff will make an Under-sheriff, provided that he shall not serve Executions above 20 l. without his special warrant, this proviso is void, as being against Law and Justice: For albeit he may chose not to make an Under-sheriff at all, or may make him at his will, and so remove him wholly, yet he cannot leave him an Under-sheriff, and yet abridge his power, no more than the King may, in case of the high Sheriff himself. Vide 167. 92. Sheriffe.

Hob. 120. *Smeles* and *Pate*.

26 Albeit a Tenant in Common enter into the whole, and claim all openly, yet he cannot thereby dispossesse his companion; for the possession of him that so enters, is ever all in vain, as well before such claime as after, so as there is no possession altered by such claim, and then a sole claim without more can never change the possession, and without a change of possession (which the Law presses) it remains as before: and therefore a Coparcener, Joyntenant, or Tenant in common can never be disseised by his fellow, but by an actual Ouster: For the same reason it is, that if a Tenant in Common do alone bring an action of trespasse against a stranger, his action shall be abated, by pleading him Tenant Tenants in Common.

nant in Common with another, albeit his entry were made generally and expresly into all, which proves that the entry of one seales for all, for else they could not joyn in an action of trespasse.

66 *Expressio eorum, quæ tacitè insunt nihil operatur.*

1 Queen Eliz. lets for years reserving rent, payable at the receipt of the Exchequer at Westm. Sen ad manus ballivorum, vel receptorum, &c. with condition to be void for non-payment, &c. the Queen grants the reversion in fee; Here, the demand of this rent ought not to be made upon the land: For in the Queens case, the limiting of the payment of the rent at the receipt of the Exchequer, or to the hands of the Bailifs, &c. is no more, than the Law would have ordered, if no place or person at all had been named in the Patent; So that such a limitation (in the Queens case) operated nothing; And therefore when the Queen alieneth the reversion to a Subject, it is then as if no limitation at all had been made, where, or to whom the rent should be paid; and then the payment ought to be upon the land, which is the principal debtor, and so by consequent ought the demand also, &c. Expressio eorum, quæ tacitè insunt, nihil operatur, & expressa non prosunt, quæ non expressa prodesunt. Co. l. 4. 73. *Boroughs* case.

2 If a man grant the Manor of Dale for years to another, except the wood and under-wood growing and being upon the said Manor, these words (growing and being) are words of abundance; because without them the Law will imply as much; for by the demise of wood and underwood upon the Manor, it is implied, that they are growing: And therefore to demise all the wood upon the Manor, and all the wood growing upon the Manor, is all one, &c. Co. l. 5. 11. a. in *Ives* case.

3 If the King demise the herbage and pasturage of a Park to A. for life, and after grant the reversion of the same to B. for life, without saying quàm citò the first demise Per mortem, surfum redditionem, forisfacturam, vel aliquo alio modo quocunque expiraverit, &c. In this case, there is no uncertainty in the last demise, when it shall take effect in possession; for it shall begin when the first demise determines, because so much is implied in Law: And therefore if the King, reciting, that another holds the Manor of Dale for his life, grants the said Manor to B. for his life. In this case, the Law implies, that the second grant shall take effect upon the determination of the first grant; there is also the same intendment in taile, or a grant in fee, &c. Co. l. 8. 56. b. in the Earl of *Rutlands* case.

4 A. possest for 15 years of the Rectory of Sale, unto which a Vicaridge was appendant, grants the prochein avoidance of the Vicaridge to B. if it shall become void during the said terme, &c. and dies intestate, his Administrator incorporates the Rectory to him in reversion, and then before the expiration of the said 15 years the Vicaridge becomes void: In this case, notwithstanding the said incorporation, B. shall have the next avoydance; because the limitation executes, if it shall become void, &c. imports no more, than what the Law would have said if it had been omitted; For if Tenant for years grants the next avoydance; the Law will imply such a limitation, if the Church shall become void during the terme; And therefore, Expressio eorum quæ tacitè insunt nihil operatur. Co. l. 8. 145 a. 2. in *Davenports* case.

5 By the Statute of 23 Eliz. cap. 1. it is provided, That every person that shall say or sing Masse, &c. shall forfeit the summe of 200 marks, and that he, which willingly hears Masse, shall forfeit 100 marks, &c. without limiting to whom the forfeitures shall accrue; and then follows the clause of forfeiting 200 l. a moneth to the Queen, and after 10 l. a moneth for keeping a Schoolmaster, &c. after which follows the clause of the distribution of the forfeitures; viz. That all forfeitures of any summes of money limited by that Act shall be divided into three equal parts, &c. And in Doctor Co. l. 11. 58. a. 1. in Doctor *Fosters* case.

Doctor Foſters caſe in the 11 Report, it was objected, that this laſt clauſe of diſtribution did onely extend to the ſaid forfeitures of 200 and 100 Marks, &c. which were not given to any perſon in certain, but indefinitely and generally, that they ſhould be forfeit, without naming to whom; and therefore the ſaid clauſe of diſtribution did onely referre to them; but ꝑ xx l. per menſem, for Recuſancy was expreſly given to the Qu: and ſo was not any of the other forfeitures; And therefore that clauſe of diſtribution ſhall not extend unto that, which was before given to the Queen, but unto thoſe penalties onely, which were left indefinitely, and given to none: Howbeit it was anſwered, and reſolved, that the ſaid branch of diſtribution ſhall extend as well to the clauſe of the penalty for Recuſancy, as to the clauſe of ſaying or hearing Maſſe; becauſe it is all one to ſay, he ſhall forfeit (generally) or he ſhall forfeit to the Queen; for the Queen ſhall have them in both theſe caſes, and Expreſſio eorum, quæ tacitè inſunt nihil operatur.

67 Parte quacunque integrante ſublata, tollitur totum.

Co. l. 3. 41. a. 3. in *Ratcliff's* caſe.

1 Lands in Fee-ſimple ſhall ever deſcend to the heire of the whole blood, and never to the heire of the halfe-blood; For in as much as the blood, which is betweene the heire and his Anceſtor, is that which makes him heire (for without blood none can inherit) it is great reaſon, that he, which hath the full and intire blood, ſhall inherit before another, which hath but a part of the blood of the Anceſtor; becauſe, Ordine naturæ, totum præfertur unicuique parti: And therefore Bracton ſaith, Propter jus ſanguinis duplicatum, tam ex parte patris, quàm ex parte matris, dicitur hæres propinquior ſoror, quàm frater de alia uxore; And Britton ſaith, that Right of blood in that caſe makes the female exclude the male, according to the Statute, Poſſeſſio fratris facit ſororem eſſe hæredem: And that of Ariſtotle, libro ropicorum, parte quacunque integrante ſublatur, tollitur totum; quod verum eſt, ſi accipias partem integrante pro parte neceſſaria, ſeu eſſentiali; As in the caſe above ſaid the blood of the father and the mother, are but one intire inheritable blood, and both of them are neceſſary and eſſential to the procreation of an heir; And therefore, Deficiente uno, non poteſt eſſe hæres: And upon this reaſon, it ſeems to Britton, cap. 5. If a man be attainted of felony by judgement, that the heirs begotten after the attainder are excluded from all manner of ſucceſſion of heritage, as well on the part of the mother, as on the part of the father; & the reaſon thereof is, becauſe the ſon begotten after the judgement had not two inheritable bloods in him; For, at the time of his generation the blood of the father was corrupt; and then, Ex leproſo parente, leproſus generatur filius: And when the father is attainted of Felony, the blood on his part being corrupted, the ſonne (as it ſeems to him) hath but halfe the inheritable blood in him without corruption, viz. the blood of the mother, and therefore he holds, that ſuch a ſonne ſhall not be inheritable, no not to his mother: And with this agrees Bracton, lib. 3. cap. 13. Non valebit felonis generatio, nec ad hereditatem paternam, vel maternam; Si autem ante feloniam generationem fecerit, talis generatio ſuccedit in hæreditatem patris, vel matris, , a quò non fuerit felonia perpetrata; because at the time of his birth he had two lawful bloods commixed in him, which could not be corrupted by the attainder ſubſequent, but onely as to him that offended. See more of this matter, Co. Inſt. pars 1. 8. a.

Bloud corrupted ſhall not inherit.

Co. l. 11. 39. a. 4. in *Metcalfs* caſe.

2 In an action of Accompt upon the judgement, quod Computet, before the final judgement given for the arrerages and damages, a writ of Error lyeth not; for in that writ theſe words, Si judicium inde redditum ſit, &c. are meant not onely de principali judicio, but alſo de integro judicio, viz. When all the matter within the original is determined, as

No writ of Error before the whole judgment compleated.

in 34 H. 6. 18. in Humphrey Bohuns case in a Quare Impedit brought against two, the one pleads to issue, and the other confesseth the action, upon which confession, judgement is given, and he against whom the judgement was given, sues his writ of Error to remove the record into the Kings Bench, but Prisot and the whole Court denied it; because the writ of Error was to rehearse all those which were parties to the original writ, and then the writ saith, Et si judicium inde reddirum sit, tunc Recordarium illud habeatis, &c. By which it appears, that the record shall not be removed by writ of Error, before the whole matter be determined.

3. A writ of Ecclesit is brought against two, and the one appears and pleads, so that he is attainted of the trespasse, and judgement is given against him; In this case the Defendant shall not have a writ of Error, before the matter be likewise determined against the other, &c. The Lord Cromwels case against Cawary and others, per Prisot, tempore H. 6. Co. ibid. b. 11

like. 4. In trespasse by the Lord of S. against one for his Cattle taken, as to parcel the Defendant pleads not guilty, and as to the rest he pleads another plea, whereupon the Plaintiff demurs, and after the issue was found for the Plaintiff, upon which he had judgement; In this case, the Defendant shall not have a writ of Error until the whole matter be determined, &c. Co. ibib. b. 2. 32 H. 6. 5 & 6. b.

like. 5. A man cast in a writ of Error upon a Judgement given, where the judgement was given of the Principal and damages, but not of the Costs; Notwithstanding the writ was reversed, because the writ is conditional, Si judicium inde reddirum sit, &c. Co. ibid. b. 3. 39 H. 6. Error 11.

like like. 6. In Formedon brought by Fitz-williams against Cooky, the Demandant hath judgement of part &c. And after the Tenant brings a general writ of Error before the diversion of the returns, & earnestly prayed that the record might be removed into the Kings Bench; but the Court would not grant it, before the whole matter in demand should be determined, for the Justices of the Kings Bench should proceed without warrant, if they should proceed upon a matter which is not determined, and where upon no judgement is given, and the whole record ought to be either in the Common Pleas, or in the Kings Bench, also the original is intire, and cannot be here and there too, &c. Co. ibid. b. 3. 12 Eliz. Dyer 291.

7. The next Antecedent is granted to two, who join in a Quare Impedit, the one dies, this shall cause the writ to abate. Dyer 2 Pa. 8. 11 Eliz.

8. Baron and Feme being Donees in special tail, the Baron is attainted of treason, and executed, having issue, the Feme dies, the issue shall not have the land, for he ought to make his conveyance by both, per Curiam. Dyer 330. 24 Eliz.

9. If an Award be made for the performance of divers things on one side, and nothing to be performed on the other, it is a good Award; and void, according to the book of 7 H 6. Hob. 49. *Nicholl's* case.

10. A. brings an action of trespasse against B. C. and D. B. pleads not guilty, whereupon issue was joyned; C. and D. make a justification, and thereupon after a replication a demurrer was joyned; Touching this demurrer, the issue was tried against B. and damages given, and judgement against him; after which judgement the Plaintiff enters a Nolle prosequi against the Defendant C. and D. whereupon Error was brought by all the Defendants against the Plaintiff; and the Error assigned was, for that the Nolle prosequi had discharged all the Defendants; but it was held, that the Nolle prosequi against C. and D. had not discharged B. and so no error, neither yet should C. and D. have joyned in this writ of Error, because there was no judgement against them, nor they grieved, and the writ of Error is, Ad grave damnum, &c. Hob. 70. *Parkers* case.

68 *Ex tota materia emergat Reſolutio.*

Co.l.3.59.b.1. in Lincoln Colledg caſe.

1 It is the office of a good Expoſitor of an act of Parliament to make conſtruction of all the parts together, and not of one part alone by it ſelfe; Nemo enim aliquam partem rectè intelligere poſſit, antequàm totum iterum atque iterum perlegerit: For example, albeit the firſt branch of ỳ Stat. of 11 H.7.c.20. makes the diſcontinuance, alienation, warranty, and recovery made by the wife of the Inheritance of her deceaſed husband to be utterly void and of none effect; Yet the clauſe following being joyned to the firſt, with this conjunctive, And that it ſhall be lawful for any perſon. &c. to whom the ſaid Inheritance, &c. ſhall appertain, to enter, &c. doth cléerly expound the generality of the words of the precedent branch; And therefore the ſenſe of both together is, that they ſhall be void and of none effect, by the entry of him, unto whom the intereſt, title or inheritance after the deceaſe of the Feme doth appertain; Howbeit they ſhall not be void, but ſtand in force between the parties themſelves, and againſt all others, ſave onely againſt ſuch as have title, &c. and they onely have power to make them void and of none effect by their entry, as aforeſaid; For, eſtates of Franktenement or Inheritance cannot be defeated without entry, and therefore by entry they ought to be made void.

Diſcontinuance by husband of wives land.

Co.l.7.42.a.3. in *Beresfords* caſe.

2 Such an Expoſition of a Déed muſt be made, that all the parts thereof may well ſtand together, and that withall it may ſtand with the rule of Law: So if lands be given to the uſe of Aden, and of the heirs male of the ſaid Aden lawfully begotten, and for default of ſuch iſſue, to the uſe of divers others in remainder, &c. Here, albeit there wants the words (of the bodie) yet is this a good limitation of an eſtate taile; For, otherwiſe it would be againſt the intent of the Donor, and all the remainders over would be void; and if theſe words ſhould be turned into Latine, they ought to be rendred thus, Et hæredum maſculorum de præfato Adeno legitimè procreat. and not hæredum maſculorum præfati Adenii, which is cléerly proved by the ſubſequent clauſe, and for default of ſuch iſſue, &c. For iſſue cannot be of Aden, unleſſe the words ſhould be, De dicto Adeno, and ſo in this caſe the one clauſe is well expounded by the other, &c.

An entail good, without mentioning of the body begotten.

Co.l.8.93.a.1. in *Frances* caſe.

3 In Replevin the Defendant avows for damage feſant, the Plaintiff pleads in Barre, that the ſaid lands were holden in ſoccage, and that I. S. being thereof ſeiſed in fée by his laſt Will, deviſed them unto him for ſixty years, if he ſhould ſo long live, &c. Unto which the Defendant pleads, that it was true, there was ſuch a deviſe made, but after the ſaid deviſe I. S. enfeoffed certaine perſons thereof to the uſe of the Plaintiff for ſixty years, if hee ſhould ſo long live, &c. whereupon the Plaintiff demurs: And in this caſe it was reſolved, that although it appeared, that the title, by which the Plaintiff claimed in his barre to the Avowry, was utterly deſtroyed (for the Plaintiff claims by the Will of I. S. which Will appears to be afterwards countermanded by the feoffment, which the Avowant afterwards pleads, and which the Plaintiff confeſſeth by his demurrer) yet ſhall the Plaintiff have judgement, becauſe his Count is good, and the Avowant in his replication to the barre of his Avowry, hath done two things; For firſt, he hath deſtroyed the title, which the Plaintiff made by the Will; And again, he hath given to the Plaintiff another title, viz. to have the land for 60 years by force of the uſes declared upon the feoffment; And therefore in as much as upon the whole record (according to which the Count ought to judge) it plainly appears, that the Plaintiff hath a lawful terme in the Lands, and that the Defendant had taken his Cattel wrongfully, for that cauſe judgement was given againſt the Avowant,

The Plaintiffs plea in barre deſtroyed, and yet recovers.

bowant, and for the Plaintiff, albeit the title, which the Plaintiff made for himself, was destroyed, &c.

Letters Patents and Acts of Parliament expounded by themselves.

4 The best Expositor of Letters Patents, and Acts of Parliament, are the Letters Patents, and the Acts of Parliament themselves; by the construction and conference of all the parts together; Optima statuti interpretatrix est (omnibus particulis ejusdem inspectis) ipsum statutum: Et injustum est, nisi tota lege inspecta, una aliqua ejus particula proposita judicare vel respondere. Co. l. 8. 117. a. 4. in Doctor Bonhams case.

The count made good by the barre, the barre by the replication, &c.

5 In Doctor Bonhams case in the eighth Report; although it was admitted, that the Plaintiffs replication was not material, and the Defendants had demurred thereupon; yet in as much as the Defendants had confessed in the barre, that they had imprisoned the Plaintiff without cause, the Plaintiff had judgement: And this is the diversity there taken, that when the Plaintiff replies, and by his replication it appears, that he hath no cause of action, there he shall never have judgement; but when the bar is insufficient in matter, or amounts to a confession of the point in debate, and the Plaintiff replies and shews the truth of his matter to enforce his case, and in judgement of Law it is not material; yet in that case shall the Plaintiff have judgement: For 'tis true, that sometimes the Count shall be made good by the barre, and sometimes the barre by the replication, and sometimes the replication by the rejoynder, &c. Howbeit the diversity is, that when the Count wants time, place, or other circumstance, that may be made good by the barre, so it is also of the bar, replication, &c. as appears in 18 E. 4. 16. b. But when the Count wants substance, no barre shall then make it good, so likewise of a barre, replication, &c. and with this agrees 6 E. 4. 2. Bone cas, & nota ibidem dictum Choke; Vide 18 E. 3. 34. b. 44 E. 3. 7. a. 12 E. 4. 6. 6 H. 7. 10. 17 H. 7. 3. 11 H. 4. 24, &c. But when the Plaintiff makes replication, sur-rejoynder, &c. and thereby it appears, that upon the whole record the Plaintiff had no cause of action, he shall never have judgement, albeit the barre, rejoynder, &c. be insufficient in matter; for the Court ought to make judgement upon the whole record, and every one shall be intended to make the best of his own case: Vide Riegeways case in the third Report, 52. And these diversities were also resolved and adjudged between Kendal and Helier M. 25, & 26 Eliz. in B. R. and M. 29, & 30. in the same Court between Gallis and Burbry. Co. l. 8. 120. b. 1. in Doctor Bonhams case.

The like.

6 Albeit the replication be insufficient, yet if the bar be also insufficient in matter, upon the whole record the Plaintiff shall have judgement; It is otherwise, when by the replication it appears, that the Plaintiff hath no cause of action; for there the Plaintiff shall never have judgement, although the barre be insufficient: As in Debt upon an Obligation with condition to perform covenants in an Indenture, the Defendant pleads performance of all the Covenants generally, when it appears to the Court; that divers of them are in the negative or disjunctive, and so the plea in the general affirmative insufficient; Yet if the Plaintiff reply, and shew a breach of one of the Covenants, which by his own shewing is no breach (upon which the Defendant demurs) judgement shall be given against the Plaintiff; because upon the whole record it appears, that the Plaintiff hath no cause of action; For the Obligation is enwrapped with condition to perform Covenants, so that the Plaintiff hath no cause of action, until there be a breach of Covenant, and by the shewing of the Plaintiff himself there is not any breach sufficient in Law to give him cause of action, and it is always intended, that every one will shew the best of his case, &c. But when the barre of the Defendant is insufficient in substance, and the Plaintiff replies and shews the truth of his case, whereby he pronounceth no Co. l. 8. 153. b. 1. in Turners case.

matter againſt himſelf; but matter explanatory, or peradventure not material, there the Court ſhall judge upon the whole record, and (the Count being good) for inſufficiency of the Barre without any regard to the replication, judgement ſhall be given for the Plaintiff: As if a man plead a grant by Letters Patents in Barre, which are not ſufficient, the Plaintiff by replication sheweth another clauſe in the ſaid Letters Patents; which clauſe is not material, the Defendant demurers in Law; In this caſe judgement ſhall be given againſt the Defendant, & ſic in ſimilibus.

Co. l. 8. 163. a. 3. in *Blackamors* caſe.

7 Among the miſpriſions remediable by the Statutes made for the amendment of records, this is one, that albeit the verdict upon iſſue tryed be given for the Plaintiff, yet if upon the whole record it appears to the Court, that the Plaintiff hath no cauſe of Action, he ſhall never have judgement, and ſo it hath been often adjudged. Miſpriſions Clerks.

Co. l. 9. 53. a. 2. in *Hickmots* caſe.

8 In debt upon an Obligation, the Defendant pleads a releaſe of the Plaintiff, &c. which was in this manner. A. doth acknowledge himſelfe ſatisfied and diſcharged of all bonds, debts, &c. made by B. (the Defendant) and it is agreed, that A. ſhall deliver all ſuch bonds as he hath yet undelivered unto B. except one bond of 40 l. not yet due, wherein B. and C. ſtand bound to A. &c. The Plaintiff replies, that the obligation excepted, and the obligation in Curia prolata are one and the ſame, whereupon the Defendant demurres: And in this caſe it was reſolved, that the exception extended to all the premiſſes; becauſe all the words before make but one intire ſentence, and the one depends upon the other; For it is reaſon, that when Bonds are ſatisfied, that they ſhould be delivered; and exceptio ſemper ultimò ponenda eſt; It was alſo reaſon, that this bond of 40 l. ſhould be excepted, becauſe it was not due when the releaſe was made, &c. A releaſe pleaded with exception.

Co. l. 10. 99. b. 3. in *Beawfages* caſe.

9 M. 10. Jac. upon a motion at the Barre it was reſolved, that an obligation to the Sheriff upon a Fieri facias, for the payment of the money in Court, &c. was not void by the Statute of 23 H. 6. cap. 10. For the firſt branch of that Statute is, that he ſhall let to baile by Writ or Bill, &c. which he could not do before, as appears, 19 H. 6. 43. The ſecond ſhews the form of the bond, &c. The third contains a penalty, that if the Sheriff take an obligation in any other form, &c. than is there preſcribed, that it ſhall be void, ſo that upon conſideration of all the branches together, and upon their coherence and dependance one upon another, it plainly appears, that the ſaid Statute doth extend onely to obligations of ſuch as are within their guard and cuſtody, and not otherwiſe. Bond taken by the Sheriff, not within the the Statute of 23 H. 6.

Co. l. 10. 137. b 1 in *Chester Mills* caſe.

10 Always ſuch conſtruction ought to be made of an Act of Parliament, that one part thereof may agree with the reſt, and that all may ſtand well together, &c. Expoſition of an Act.

Co. l. 11. 44. a. 4 in *Richard Godfreys* caſe.

11 The Juſtices ſhall aſſeſſe the Fines of Copiholders upon the due conſideration of all circumſtances, Quam rationabilis debet eſſe finis non definitur, ſed omnibus circumſtantiis inſpectis pendet ex Juſticiariorum diſcretione; And ſo it was adjudged in Communi Banco Inter Stallon Plaintiff, and Brady Defendant, P. 9. Jac. 18. 5. Rot. Copihold Fines.

Co. l. 5. 79. b. in *Fitz-herberts* caſe.

12 Tenant for life, the remainder to his ſonne and heire apparent in tayle by covin and agreement betwixt him, and A. and B. to the intent to barre his ſon of his remainder by a collateral warranty, makes a leaſe for years to A. who makes feoffment in fee to B. to whom the father releaſeth with warranty, and all this is by covin and content betwixt the parties, to the intent aforeſaid; After this the father dies, and the warranty deſcends upon the ſonne, being then of full age: Reſolved, per totam curiam, that this warranty ſhall not barre the ſonne; becauſe the feoffment of the Leſſee for years is diſſeiſin, and the father himſelfe is particeps Warranty that commeth by diſſin.

particeps Criminis, and agreeing thereunto; then albeit the releaſe with warranty is made after the diſſeiſin: yet in as much as the diſſeiſin was to ſuch an intent and purpoſe, the Law will adjudge upon the whole Act, as it is agreed in 19 H. 8. 12. If a man diſſeiſe another with intent to make feoffment with warranty, albeit he make the feoffment twenty years after the diſſeiſin, yet the Law will adjudge upon the whole act, and the diſſeiſin and warranty ſhall be coupled together according to the intent of the parties; and therefore in ſuch caſe the law will adjudge the warranty to begin by diſſeiſin, albeit they are made at ſeveral times: So if a man make a leaſe of lands in two ſeveral Counties, reſerving an intire rent, albeit the livery be made at ſeveral times (firſt in one County, and then in another) yet the rent is iſſuing out of the lands in both Counties; So likewiſe if a man make a charter of feoffment of certain lands with warranty, and deliver the deed, and after make livery of the land ſecundum formam cartæ; Here alſo, the Law will adjudge upon the whole act; and albeit the deed be delivered at one time, and the livery of the land at another time, and although a warranty ought to enure upon an eſtate, yet upon the whole matter the warranty is good.

Eldeſt childe. 13 The uſe of a recovery was limited by a Latin deed to the uſe of H. (viz. he againſt whom the recovery was had) for life, the remainder Seniori puero de corpore H. in taile, &c. Afterwards H. covenants by an Engliſh Indenture to levy a fine to the uſe aforeſaid, wherein the uſe was limited to the uſe of the eldeſt child of the body of H. &c. H. hath iſſue two children, whereof the elder was a daughter, and the younger a ſonne; And in this caſe, it was adjudged, that the daughter ſhould have the land; for albeit the word puero be indifferent to each ſex; and then the male for dignity ſhould be preferred, yet becauſe the Engliſh Indenture hath declared the conſtruction to be the eldeſt child, the daughter ſhall have it. Dyer 337. 36. 16 Eliz.

Advowſon. 14 The Rectory of Weſt Bodwin ought to have come to E. 6. by attainder of felony, to which the Advowſon of the Vicarage was appendant, and was concealed; Queen Eliz. grants the Rectory, Et omnia hæreditamenta, parcella, ſpectant, vel pertinent. dict. Rectoriæ, and becauſe the patent was in tam amplis modo & forma, as the Felon had it, and alſo Ex certa ſcientia, ſo as the Queen was not deceived, it was adjudged, that the Advowſon paſſed without ſpecial mention thereof. Dyer 350. 21. 18 Eliz.

69 *Partes ſimul ſumptæ componunt totum: & Totum comprehendit ſuas partes.*

Joint grants paſſe all. 1 Where all the Joyntenants joyne in a feoffment, every of them in judgement of Law doth give his owne part; and ſo by that means the whole eſtate doth paſſe to the Feoffee according to the feoffment; So it is alſo, when all that have right, title, or intereſt in any thing, do joyne in a conveyance, the eſtate ſhall be thereby clearly ſetled in the Grantee, as the Diſſeiſee and the Diſſeiſor, or his heir, the Leſſee for years or life, and the reverſioner, and the like. Co. Inſt. pars 1. 186. a. 3. Litt. § 534. Co. lib. 302. a. b.

Grant of a Benefice. 2 The Patron, Patron, and Ordinary may charge the Glebe, for they all have in them the Fee-ſimple thereof; So may the Patron and Ordinary in time of vacation, and the Glebe of a Donative may be charged by the Patron and Incumbent without the Ordinary, &c. Litt. § 648. Co. lib. 343. b. 4. &c. F. N. B. 152. B.

Grant of a Rent-charge. 3 A. enfeoffs B. upon condition, the Feoffor and Feoffee by deed grants a Rent-charge to C. the condition is broken, and the Feoffor enters; yet is the grant of the rent good; For, both of them joyning together in the deed, they had power to charge the land, &c. Co. Lit. 146. b. *Mayowes caſe.*

Co. l. 4. 26. b. 1. in *Nelwiches* case, & *Meals* case. Co. l. 4. 24. b. *Murrels* case.

4 If the Lord of a Copihold Manor grant the inheritance of all his Copiholds; albeit no mention at all is made of the grant of the Manor; yet the Grantee may keep a Copihold Court, and take surrenders, make admittances, &c. It is otherwise, where the grants the inheritance of some of them; retaining the rest to himself; for in that case the Grantee cannot keep Court; because those Copiholds are in that case severed from the Manor, &c. Grant of Copiholds.

F.N.B. 48. r.

5 A Parson shall have a Juris Utrum, where the lands or tenements are aliened by his Predecessor, or if recovery be had against the Predecessor by default, or reddition, or Nient dedire of his Predecessor: where he hath not prayed in aide of the Patron and Ordinary; but if he pray in aide of the Patron and Ordinary, and they joyne in aid, and render the land, or do not gainsay the Demandants action; in that case, the Successor shall not have a Juris Utrum, because the intire estate was in them three, and they altogether had power by Law to dispose of it. Recovery of Benefice.

Dyer 34. 20. &c. 28 & 29 H. 8.

6 Two were outlawed upon an appeal of Murther, and they purchased their charter of pardon in these words, Donavimus, remittimus, &c. W. B. & L. B. omnia & omnimoda Utlag. versus præf. W. & L. vel versus eorum alterum promulgat, &c. And exception was taken by the Kings Counsel, because the words of pardon were joynt, whereas they should have been Pardonavimus, &c. W. B. & L. B. & eorum alteri, &c. because each felony was several, and the several contumacies should have had several pardons; but the pardon was allowed, because (as it seems) it comprehended all that both or either of them were guilty of. And such another pardon was also allowed in 22 E. 4. Term. Rot. 19. but the book is mis-reported, any contrary to the record. Charter of pardon.

7 Vide supra 27. 9.

70 Intire things cannot be severed.

Co. Inst. pars 1. 32. a. 1. and 164. b. 3.

1 Of inheritances that are intire, no division can be made by metes and bounds; And therefore a woman cannot be endowed of the intire thing it self, but shall be endowed thereof in a special and certain manner; As of a Mill not by metes and bounds, nor in common with the heir, but of the third toll dish, or de integro molendino per quem libet tertium mensem: And so of a Messuage, either of every third day in the week, or of every third week, or moneth: So likewise a woman shall be endowed of the third part of the profits of Passage, of a Ferry, Parke, Dove-house, Piscary, viz. Tertium piscem, vel ictum retis tertium, and of the third part of the profits of the office of the Bayliffe, Et de tertia parte exitus provenientis de curiis in quibus Abbatissa Willm. Of the third part of the profits of Courts, Fines, Perquisits, &c. Of the third presentation to an Advowson, &c. Dower of intire things.

Co. lib. 7. b. 3. & 10. b. 5. Litt. § 312, 313. & Co. l. 8. 155. a. 1. in *Edward Altham's* case, and l. 10. 128. in *Clun's* case.

2 If a man bound himself and his heirs in a Recognisance to pay an hundred pounds at five several dayes, the Conisee presently after the first day of payment shall have execution for that summe, and shall not stay till the last be past; because these touch the realty, and are of the nature of the land; and the profits thereof; which are severable, and the several payments upon the Recognisance, are in the nature of so many several Judgements: So it is also of a Covenant or promise; for after the first default an action of Covenant, or an action upon the Case doth lie, because these are also several inheritances: But if a man be bound in a bond, or by covenant to another to pay an hundred pounds at five several dayes, he shall not have an action of Debt before the last day be past; Intire action & contra.

for

for a bond or contract are meerly in the perſonalty, and intire, neither yet can a bond be ſued above once, as a covenant, &c. may. F. N. B. 130. h. & 131. a.

like. 5 In treſpaſſe, or any action in nature of treſpaſſe, which is in law ſeveral, and where every one may anſwer without the other, there a protection cauſt for one, ſhall ſerve for him onely, unleſſe they ſoyne in pleading; or if they plead ſeveral pleas, and one Venire facias is awarded againſt all, there a protection cauſt for one ſhall put the plea without day for all (and therefore in former times the Plaintiff uſed to ſue out ſeveral Venire facias in thoſe caſes for feare of a protection, &c.) But in every action or plea, real or mixt, againſt two (where a protection doth lie) or in debt, detinue, or accompt, a protection cauſt for the one doth put the plea without day for all; for theſe actions are in their nature intire, in reſpect of the joint priority and intereſt, that attend them, &c. Co. lib 130 b. 2.

like. 4 If a real action be brought by ſeveral Præcipes againſt two or more, if the Demandant be non-ſuit againſt one, he is non-ſuit againſt all; For, as to the Demandant, it is but one intire writ and one Teſte, &c. Co. lib. 139. a. 4.

Annuity like a Rent-charge. 5 A man grants a Rent-charge to another and his heirs, the Grantee dies, and his wife recovers dower thereof againſt the heire; In that caſe the heir cannot after ſuch endowment bring a writ of Annuity for the other two parts; for either the whole muſt be a Rent-charge, or the whole muſt be an Annuity; becauſe otherwiſe it would not be according to the vow of the grant, which is intire without fractions, &c. Co. lib. 144 b. 4.

Rent-charge diminiſhed by execution of part of the land. 6 If a man, which hath a Rent-ſervice, purchaſe parcel of the land, out of which that rent is iſſuing, that ſhall not extinguiſh the rent, ſave onely for the parcel; For Rent-ſervice in that caſe is ſeverable, and may be apportioned according to the value of the land: becauſe it iſſueth out of the profits of the land, and is due by common right: But if a man hath a Rent-charge to him and his heirs iſſuing out of land, and he purchaſeth parcel of that land to him and his heirs, the whole Rent-charge is extinct, and the Annuity alſo; becauſe a Rent-charge is intire, and iſſuing out of every part of the land againſt common right: So likewiſe if one holds his land of his Lord by ſervice of rendring to his Lord yearly at ſuch a Feaſt an Horſe, a Spur of gold, a Clove-gilliflower, or the like, if in that caſe the Lord purchaſe parcel of the land, ſuch ſervice is gone; becauſe ſuch things are in their nature intire, and cannot be ſevered or apportioned. Vide Bruertons caſe, Co. l. 6. 1. Litt. § 222. Co. lib. 147. b. 4. Co. lib. 149. a. 1.

Rent-charge becomes a Rent-ſeck. 7 It is ſaid, that if a man grant a rent out of three acres, and grant over, that if the rent be behind, the Grantee ſhall diſtrain for the rent in one of the acres, this rent is intire, and cannot be a Rent-ſeck out of two acres, and a Rent-charge out of the third acre, and therefore it is a Rent-ſeck for the whole, and yet he ſhall diſtrain for it in the third acre: So if a rent be granted to two and their heirs out of an acre of land, and that it ſhall be lawful for one of them and his heirs to diſtrain for it in the ſame acre, this is a Rent-ſeck; For in as much as they ſtand jointly ſeiſed of one intire rent, it cannot be as to one a Rent-ſeck, and as of the other a Rent-charge; And this diſtreſſe is as an appurtenant to the rent; and therefore in that caſe the Survivor, or their Grantee of the rent may diſtrain for it, &c. Co. lib. 147. b. 1. and Co. l. 7. 24. b. 2. Bats caſe. 7 E.

Entire rent-ſervice multiplied. 8 If the ſervice of the Tenant be to render unto the Lord yearly at ſuch a Feaſt an Horſe, a Red-roſe, or the like intire annual ſervice, which cannot be ſevered, and the Tenant alien part of the land to a ſtranger; In that caſe, becauſe the rent cannot be apportioned, it ſhall be multiplyed, and both the Feoffor and Feoffee ſhall pay each of them a Horſe, Red-roſe, &c. And therefore if the Tenant, which holds by ſuch Co. lib. 149. a. 1. and Co. l. 6. 1. Bruertons caſe.

ſuch ſervice eſcheats the father of the Lord of part of the land, and that land afterwards deſcends to the Lord; yet that ſhall not extinguiſh that annual intire ſervice, but the Feoffor ſhall ſtill hold by a horſe, &c. becauſe the ſervice was multiplies, and each of them, viz. the Feoffor and the Feoffée held by a horſe, &c.

Co.lib.149.a.2. 9 A. hath a Common of paſture certain (as for ten beaſts) in forty acres of land, and twenty of thoſe acres deſcend unto him; in that caſe, the Common certain ſhall be apportioned: It is otherwiſe, if it be common of paſture ſans number; for that being intire and uncertain, cannot be apportioned, but ſhall ſtill remain; ſo it is alſo of common of Eſtovers, Turbary, Piſcary, &c. Common certain ſhall remain after deſcent of parcel.

Co.lib.& Co.l. 6.2. *Bruertons* caſe. 10 If three Joyntenants hold by an intire yearly rent, as a horſe, a grain of wheat, or the like, and the Tenants ceaſe by two years, and the Lord recovers two parts of the land againſt two of them, and the third ſaves his part by tendring of the rent, &c. and ſuing ſurety, Albeit the Lord comes to the two parts by lawful recovery, grounded upon the default and wrong of the two Joyntenants, yet ſhall the intire annual rent be extinct. Vide infrà, r. 114. c. 45. Rent intire extinct by recovery of part.

Co.lib.& Co.l. 6.1. *Bruertons* caſe. 11 If the Tenant holdeth by fealty and a buſhel of wheat, or a pound of Pepper, or of Comyn or ſuch like, and the Lord purchaſeth part of the land, there ſhall be an apportionment, as well as if the rent were in money; becauſe ſuch ſervices will admit ſeparation and diviſion: But if the rent were by one grain of wheat, or one pepper-corn, or one ſeed of comyn, by the purchaſe of part, the whole ſhall be extinct; becauſe theſe things are intire, and will not admit diviſion, or ſeverance. Extinct by purchaſe of part.

Co.lib.149.b.1. 2. and Co.l.8. 1. in *Bruertons* caſe. 12 If there be Lord and Tenant by Fealty and Heriot ſervice, and the Lord purchaſe part of the land, the Heriot-ſervice is extinct; becauſe it is intire, and alſo of ſuch value, that peradventure the land ſtill remaining in the Tenants hands, will not for the future be able to diſcharge it: It is otherwiſe, where the Tenant holds by Heriot-cuſtome; for there purchaſe of part ſhall not extinguiſh the ſervice, yet in that caſe alſo the Heriot is intire; but Conſuetudo vincit communem legem. Heriot-ſervice and Heriot-cuſtome.

Litl. § 229. Co.lib.149.a.4. 13 If the Tenant holds of his Lord by Homage, Fealty, Eſcuage, and Rent, and the Lord purchaſe parcel of the land, In this caſe, the Rent and Eſcuage ſhall be apportioned; but the Homage and Fealty ſhall ſtill remain intire for the reſidue of the land ſtill remaining in the Tenants hands; becauſe he ſtill holds the reſidue of the land of him, and then he muſt hold it by ſome ſervice or other, and therefore thoſe ſervices being in their nature unſeverable and intire, they ſhall totally remain, being indeed the ſtrict and leaſt chargeable ſervices that the Tenant can hold by, &c. Fealty & Homage remain after purchaſe.

Co.lib.150.a.1. 14 Albeit in ſome caſes a Rent-charge, which is in his nature intire, may by act in Law be apportioned, as when the Grantee of the rent comes to the lands by deſcent, or the like; Yet in ſuch caſes the writ of Annuity faileth, becauſe that writ being grounded upon the grant by deed (which is intire) muſt be ſued for the whole, and cannot be ſued for part: Alſo a rent in reſpect of the realty may be apportioned; but the perſonalty is indiviſible, and ſhall not be ſevered, no not by act in Law; As if execution be ſued of body and lands upon a Statute Merchant or Staple, and afterwards the inheritance of part of thoſe lands deſcends to the Conuſee; In this caſe, all the execution is avoided; for the duty being intire, and perſonal, cannot be diviſed, &c. Annua nec debitum judex non ſeparat ipſum. The charge a ſhare not apportionable.

Co.lib.150.b.2. 15 A Rent-ſervice is of its own nature apportionable; Howbeit if it be changed from Rent-ſervice to a Rent-ſeck by ſeverance thereof from Rent-ſervice becomes Rent-ſeck.

from the Seignory, it thereupon becomes intire and unseverable according to the nature of a Rent-seeke: And therefore if there be Lord and Tenant by fealty and certain rent, and the Lord by deed grant the rent in fee, fee-taile, or for life, saving the fealty, the rent, which before was Rent-service, is by that severance of it from the Seignory made a Rent-seek; and then if the Grantee purchase part of the land out of which that rent is issuing, the whole rent is extinct.

16 If a man be seised of two acres of land in two several Counties, and maketh a lease of both of them, reserving two shillings rent; In this case, albeit several liveries be made at several times, yet is it but one intire rent in respect of the necessity of the case, and he shall distrain in one County for the whole rent, and make one avowry for the whole, &c. Co.lib.153.b.4.

County intire, for livery.

17 Every County is as it were an intire body of itself, so that upon a feoffment of lands in many Towns in one County, livery of seisin made in one parcel in any one of those Towns in the name of all, sufficeth for all the lands in all the other Towns within the same County; but upon a feoffment of lands in divers Counties, there must be livery of seisin in every County: In like manner, if a man have cause to enter into lands lying in divers Towns in the same County, if he enter into one parcel thereof lying in one Town, in the name of all the lands in the same County, by such entry he hath as good possession of all those lands, as if he had entred into every parcel; but if they lie in several Counties, there must be several entries. So likewise if a man be disseised of a rent issuing out of lands lying in divers Towns within one and the same County, he shall need to bring but one Assise for the recovery of that rent, &c. But if the lands lie in several Counties, he shall have several Assises in comitatu Comitatus, and in either County shall make his plaint of the whole rent; Howbeit there shall be but one Patent to the Justices. And this Assise in comitatu Comitatus is given by the Statute of 7 R. 2. For no Assise lay in that case at the Common Law, but the party might distrain for the whole rent in either County. Flinch, 79. Littl. § 418. Littl. § 417. Co.lib.252 b.4. Co.lib.153.b.4. Stat.7 R.2. 20.

The like for services.

18 If a man hold divers Manors or lands in divers several Counties by one tenure, and the Lord is seised of his services, he shall have several writs of customes and services, viz. For every County one writ returnable at one day in the Court of Common Pleas, and thereupon Count according to his case by the Common Law: But if the Tenant in that case do cease, the Lord shall not have several writs of Cessavit ut supra; For the writ of Cessavit is given by Statute of West. 2. cap. 21. and the form and manner of that writ is therein prescribed; for which cause it is holden in our books, that in that case a Cessavit lay not at the Common Law, &c. Co.lib.154.a.a.

Villein, advowson, &c. indivisible.

19 Of Inheritances some be intire, and some several, and of intire, some be dividible, and some individible, &c. If a Villein descend to two Coparceners, this is an intire inheritance: and albeit the Villein himself cannot be divided, yet the profit of him may; for one Coparcener may have him one day or week, and the other another day or week, &c. They may likewise have an Advowson in coparcenary, and may present by turns; because that is also an intire Inheritance, which cannot be divided. Co.lib.164.b.3.

Rivers, Parks, and things incorporeal not dividable.

20 If a man have reasonable Estovers, as House-bot, Fire-bot &c. appendant to his Free-hold, they are so intire as they shall not be divided between Coparceners: So if a Corody or certain be granted to a man and his heirs, and he hath issue divers daughters, this Corody shall not be divided between them; It is otherwise of a Corody certain, for thereof partition may be made. Likewise Homage, Fealty. Co. ibid. b. 4.

alty, Piſcary uncertain, Common ſans number, and the like, cannot be divided between Coparceners and the two laſt, not onely becauſe they are intire, but alſo becauſe it would be a charge to the Tenant of the Bodie, if ſuch hereditaments ſhould be devillible, the intereſt in them being unlimited, &c.

Co.ib.150.a.3. 21 If a Corodie be granted to two men and their heirs; In this caſe, becauſe the Corodie is incertain, and cannot be ſevered, it ſhall amount to a ſeveral grant, viz. to each of them one Corodie; for the perſons be ſeveral, and the Corodie is perſonal, and the grant ſhall be taken moſt ſtrongly againſt the Grantor. Grant of a Corodie to two.

Litt. § 314. Co. ibid. 197. 22 If two Tenants in Common of lands in fee make a gift in tailе or a leaſe for life to another rendring to them yearly a certain rent, and a pound of Pepper, and an Hawk, and an Horſe, and they are ſeiſed of that ſervice, and afterwards all the ſaid ſervices being arreare, they diſtrain for it, and the Tenant makes reſcous; In this caſe, as to the rent, and the pound of Pepper, they ſhall have two ſeveral aſſiſes, becauſe thoſe rents are ſeverable, and the two Tenants in Common claim and hold the reverſion (unto which the ſame rents are incident) by two ſeveral titles: But as to the Hawk and Horſe, albeit they be Tenants in Common, &c. they ſhall joyn in the aſſiſe, becauſe theſe things are intire and cannot be ſevered; for one of them alone by himſelfe cannot make his plaint in Aſſiſe for the moity of an Hawke, or of an Horſe; becauſe the Law will never ſuffer a man to deſtand any thing againſt the order of nature or reaſon, as it appeareth by Littleton, Sect. 129. Lex enim ſpectat naturæ ordinem. Tenants in common joyn in any life of any thing. &c.

Co. ibid. b. 3. 23 Tenants in Common ſhall joyn in a Quare Impedit, becauſe the preſentation to the Advowſon is intire: Alſo they ſhall joyn in a writ of right of Ward, and raviſhment of Ward for the bodie, for the ſame reaſon. In an aſſiſe, ward, &c.

Co.ib.147.b.4. & 185.a.4. 24 If two Tenants in Common be of the Wardſhip of the bodie, and a ſtranger raviſheth the Ward, and one of the Tenants in common releaſeth to the raviſher, this ſhall go in benefit of the other Tenant in common, and he ſhall recover the whole; Neither yet ſhall that releaſe be any bar to him; for that the Wardſhip of the bodie is intire, and cannot be ſevered; So it is alſo if there be two Joyntenants of an Advowſon, and they bring a Quare Impedit, and the one doth releaſe, yet the other ſhall ſue forth and recover the whole preſentment: Likewiſe two Tenants in Common ſhall joyn in a detinue of Charters, and albeit the one be non-ſuit, yet the other ſhall recover. Releaſe, to prejdice.

Co. l. 5.97.b. the Counteſſe of Northumberlands caſe.

Co. Inſtit.part 1. 199. b. 4. 25 There is a diverſity between Chattels real, that are apportionable, and ſeverable, as leaſes for years, wardſhip of lands, intereſt of tenements by Elegit, Statute Marchant, Staple, &c. of lands and tenements, and Chattels real intire, as Wardſhip of the body, a Villein for years, &c. For if one Tenant in Common take away the ward, or the Villein, &c. the other hath no remedie by action; but he may take them again: Howbeit for the other, he, that is outed, may have remedy againſt his companion that outs him, viz. by Ejectione Firmæ, Ejectment of Ward, Quare ejecit infrà terminum, &c. Tenants in common. Ward. Villein.

Co.ib.100.a.3. 26 If two Tenants in Common be of a Manor, to which Waiſe and Stray doth belong, a Stray doth happen, they are Tenants in common of the ſame, and if one doth take the Stray, the other hath no remedie by action, but onely to take it again; unleſſe by preſcription they claim to have them by turns, &c. Waiſe. Iſtray.

Co.ib.215.a.3. 27 The Grantee of part of the reverſion ſhall not take advantage of a Condition, by the Statute of 32 H. 8. cap. 34. As if a leaſe be made of three acres, reſerving a rent upon Condition, and the reverſion is granted of two acres, the rent ſhall be apportioned by the act of the parties; A condition inſtre.

ties; but the condition is deſtroyed for that it is intire and againſt common right: It is otherwiſe in the Kings caſe, &c.

ſe of actions. 27 In mixt actions, as an action of Waſte, &c. which are mixed both in the realty, and perſonalty, a releaſe of all actions real, or a releaſe of all actions perſonal, is a good plea in barres becauſe the action is in its nature intire, and therefore a releaſe of part ſhall annul all, &c. There is the ſame reaſon of an Aſſiſe of Noyel diſſeiſin, a writ of Annuity, Quare Impedit, &c. Litt. §. 492.

nance & ld intire not ſo. 28 If a Diſſeiſor make a leaſe for a hundred yeares, the Diſſeiſee may confirm parcel of thoſe yeares, viz. Either the whole land for part of the terme, or part of the land for the whole term, &c. So likewiſe if the Tenant for life make a leaſe for a hundred years, the Leſſor may confirm either for part of the terme, or for part of the land; but an eſtate of Inheritance or Free-hold cannot be confirmed for part of the eſtate; becauſe thoſe eſtates are intire, and not ſeverable as yeares be: And therefore if the Diſſeiſee confirm the eſtate of the Diſſeiſor, albeit in the deed of confirmation, the limitation be expreſſe to be in taile, for years, for a day, or onely for an hour, yet hath the Diſſeiſor a Fee-ſimple, becauſe his eſtate was before the confirmation intire and unſeverable. Co. ibid. 285. a. 4. Co. ib. 297. a. 2. & Co. l. 5. 6. in *Foords* Caſe. Litt. §. 519.

mation rt of a

itance & ld intire 29 If any Diſſeiſor make a leaſe for life, the remainder in fee, if I confirme the eſtate of the Tenant for life, yet after his deceaſe I may well enter; becauſe they are ſeveral eſtates, and nothing is confirmed but the eſtate for life: So it is alſo when the ſeveral eſtates are in one and the ſame perſon, as if the Diſſeiſor make a gift in taile, the remainder to the right heirs of the Tenant in taile, or the remainder firſt for life, and then to the right heirs of the Tenant in taile; In theſe caſes, if the Diſſeiſee confirm the eſtate of the Tenant in taile, it ſhall not extend to the other eſtates, cauſa qua ſuprà: But if the Diſſeiſor make a leaſe for life to A. and B. and then the Diſſeiſee confirms the eſtate to A. here B. ſhall take advantage thereof; becauſe the eſtate of A. which was confirmed, was intire and joint with B. and therefore in that caſe, the Diſſeiſee ſhall not enter into the land, and deveſt the moity of B. So likewiſe if the Diſſeiſor enfeoffe A. and B. and the heirs of B. and then the Diſſeiſee confirms the eſtate for his life, this ſhall not onely extend to his companion, but to his whole Fee-ſimple alſo; becauſe to many purpoſes he had the whole Fee-ſimple in him, and the confirmation ſhall be taken moſt ſtrongly againſt him that made it, &c. Litt. §. 521. Co. ibid. 297. a. 4. & b. 2.

nfirmation ne jointe- ſhall e- e to both.

nfirmati- Baron & nor good. 30 If I let land to a Feme ſole for terme of her life, who takes husband, and after I confirme the eſtate of the Baron and Feme to hold for their lives; In this caſe the Baron did not hold jointly with his Feme, but held in her right for the terme of her life; becauſe the wife had the whole eſtate in her before for life, and Jointenants ought to come in by one intire title, &c, Litt. §. 285. Co. ibid. 299. a. 4.

rnment

31 If the reverſion of three acres be granted, and the Leſſee agree to the ſaid grant for one acre, this is good for all three: So it is alſo of an Attornment in Law, if the reverſion of three acres be granted, and the Leſſee ſurrender one of the acres to the Grantee, this attornment ſhall be good for the whole reverſion of the three, according to the Grant, &c. For the Grant being intire, the attornment muſt be intire alſo. Co. ibid. 309 b. 4. & Co. Litt. 5. 81. a. 4. in *Foords* caſe.

nent & y intire. 32 If here be Lord and Tenant, and the Tenant hold of the Lord by twenty manner of ſervices, and the Lord grants his Seigniory to another, if the Tenant pay de facto any parcel of any of the ſervices to the Grantee, this is a good attornment for all the ſervices; al- Co. ibid. 314. a. 4. Litt. §. 563.

though the Intent of the Tenant was to attorne but for that parcell, onely: becauſe, albeit there be divers manners of ſervices, which the Tenant ought to performe, yet is the Signiory intire, and the Tenant having attorned for part, it cannot be void for that part, and good it cannot be, unleſſe it be for the whole, &c. Neither can the Tenant attorne for a time, or upon Condition, &c.

Co. l. 5. 81. a. 4. in *Foores* Caſe. Litt. §. 566. Co. ibid. 315. a. 3.

33 If there be many Jointenants, which hold by certaine ſervices, and the Lord grant to another the ſervices, and one of the Jointenants attorne to the grantée, this is as good, as if all had attorned, becauſe the Signiory is intire, for there cannot be an attornement in part, &c. So alſo a ſeiſin of a Rent by the Lands of one Jointenant is good for all, and a ſeiſin of part of a Rent is a good ſeiſin of the whole, &c. The like.

Co. ibid. 335. a. 1.

34 If the donée in taile enfeoffe the donor alone, that makes no diſcontinuance: becauſe the reverſion in that caſe is not diſcontinued, &c. But if he enfeoffe the donor and a ſtranger, this is a diſcontinuance of the whole Land, becauſe the ſtranger is then ſeiſed per my & per tout, as well as the donor, &c. Diſcontinu by enfeof t e Donor a ſtranger.

Co. Inſt. p. 1. 373. b. 2.

35 If Husband and Wife Tenants in ſpeciall taile, have iſſue a Daughter, and the Wife die, the Husband by a ſecond Wife hath iſſue another Daughter, and diſcontinueth in Fée, and dieth, a Collaterall Anceſtor of the Daughters releaſeth to the diſcontinuée with Warrantie, and dieth, the Warrantie deſcendeth upon both Daughters: yet the iſſue in taile ſhall be barred of the whole: becauſe in judgement of Law the Warrantie deſcendes upon each of them intirely. Warrantie deſcending tirely bare the iſſue.

Co. ibid. 390. a. 2.

36 If a Man maketh a Feoffment in Fée with Warrantie to the Feoffée his heires ar aſſignes, and the Feoffée re-enfeoffeth the Feoffor and his Wife, or the Feoffor and any other ſtranger, the whole Warrantie remaineth ſtill, becauſe the Warrantie is intire and not parted: So it is alſo if two doe make a Feoffement with Warrantie to one and his heires and Aſſignes, and the Feoffée re-enfeoffe one of the Feoffers, In this Caſe alſo the Intire Warranty doth remaine, &c. Warrantie intire.

Co. ibid. 367. b. 4. Litt. §. 60.

37 If a Man of full age, & an Infant make a Feoffement in Fée with Warrantie, this Warrantie is not void in part, and good in part, but it is good for the whole againſt the Man of full age, and void againſt the Infant: For albeit the Feoffement of an Infant, paſſing by livery of ſeiſin, is voidable, yet the Warrantie, which taketh effect onely by deed, is meerely void, &c. The like.

Co. Rep. l. 86. b. 3. in *Corbets* Caſe.

38 If a Man let Lands for yeares, the remainder in Fée, and livery is made to the Leſſée for yeares onely, this ſhall convey the Fée-ſimple to him in remainder, For albeit livery be not neceſſary to the Tenant for yeares, yet it ſhall enure for the benefit of him in the remainder: becauſe the particular term, and all the remainders, which depend thereupon (though never ſo many) be in judgement of Law make but one intire Eſtate, which takes effect at one and the ſame time, &c. A Leaſe and remainder o intire Eſtate.

Co. l. 3. 86. b. 3. *Corbets* Caſe.

39 Since the Statutes of Uſes, 27 H. 8. If a Man make a gift in taile, with proviſo or upon Condition, that if the donée doth ſuch an Act, that his Eſtate, ſhall ceaſe during his life, or if a Feoffment in Fée be made with proviſo, or upon ſuch a Condition, that his Eſtate ſhall ceaſe during his life, theſe proviſoes or Conditions are utterly void, againſt Law: for ſuch an eſtate taile or in Fée in Land being intire, and without fractions, ſuch a Condition or limitation annexed to ſuch Eſtates ought to deſtroy the whole Eſtate, unto which they are annexed, and not part thereof: and he that A Condiſi without fra tions.

that enters for the condition broken, ought to have the same estate, which he had, when he made the estate conditional, which was intire, and without fractions, &c.

fractions states. 40 If a man make feoffment in fee of land to the use of A. and his heires every Monday, and to the use of B. and his heires every Tuesday, and to the use of C. and his heires every Wednesday, these limitations are void; For we finde no such fractions of estates in the Law. Co. ibid. 87. a. 4. *Per Walmesly.*

all Livery. 41 A man makes a lease for yeares of an house, and of a Close lying by it selfe, and of certain other lands in Dale, the Lessor makes feoffment of all, and makes livery in the Close, the Lessee being at that present in the house: In this case the livery was adjudged void for all; because the demise being intire, the possession of the house is the possession of all intirely demised with it, &c. So it had been also, if the Close had been demised by the Lessee at will, but not for years. Co. l. 2. 31. b. *Bettiswo. the* Case.

fractions bargaine & 42 If a man be seised of a Mannor, part in demesne, part in lease upon Rent reserved, and part in Copihold, and by Indenture in consideration of money, &c. demiseth, granteth, bargaineth, selleth, &c. unto A. B. and C. the said Mannor with the Appurtenances, and the reversions and remainders thereof, &c. together with all rents reserved upon any demise, &c. to have and to hold to them and to their Assignes immediately after the decease of the owner of the Mannor, for the terme of seventeen yeares; In this case, the grant ought to take effect intirely, as a demise at the Common Law, or intirely by bargain and sale, by raising of an use by force of the Statute of 27 H. 8. and not for part by the Common Law, and for another part by raising of an use; for thereby the Mannor may be dismembred, which is against the expresse demise and bargain; because both parties agree, that a Mannor should be intirely demised and bargained, and also that a Mannor should be accepted by the Lessee without any fraction or division thereof. Co. l. 2. 35. b. 3. in S. *Rowl. Heywards* case.

jointenancy in intire Estate. 43 If there be two Jointenants for life, and the Reverstioner grants over his estate, whereupon one of the Jointenants onely doth attorn; Yet this is a good attornment of both to vest the whole reversion in the Grantee; because the estate of the joint Lessees being intire (for every Jointenant is seised, per my & per tout) the reversion, which is dependant and expectant, upon such an estate is intire also; and therefore the attornment by one of them, is attornment for both to convey the whole reversion, &c. So if the Lessor disseise his two Lessees for life, and enfeoffe another, and one of the Lessees re-enter this act of one of them is attornment in Law for both: If one Jointenant give seisin of Rent, that shall binde his companion, as it is agreed in 39 H. 6. 2. If a lease be made to two, and after the reversion is granted to one of them, this is holden good attornment in Law for both (Baldwin 28 H. 8. Dyer, 12. b.) And all this in the respect of the intirenesse of their estate, &c. Co. l. 2. 66. b. 4. & 67. a. *Tookers* Case.

ondition of ond to per- m to Cove- ts is intire. 44 A. having an office and power to make Deputies, by Indenture betwixt him and B. and for a hundred pound paid, &c. makes deputation thereof to B. and A. covenants with B. that if A. die before B. that then the Executors of A. shall repay unto B. fifty pounds, with divers other Covenants in the said Indenture concerning the said office in the enjoyment thereof; And A. was bound to B. in two hundred pounds for the performance of Covenants, and in debt the breach was alleaged for the non-payment of the said fifty pounds, in as much as B. survived A. Here, albeit the said Covenant to repay fifty pounds was lawful, yet in as much as the rest of the Covenants were against the Co. l. 3. 83. b. 4. *Colshills* Case.

the Statute of 5 E. 6. cap. 16. The bond which was a thing intire being void for those unlawfull Covenants, it was utterly void for all: And if the addition of a Law-full Covenant should make the bond of force as to it the Statute would then serve to little or no purpose, &c.

Co. l. 4. 9. a. 3. *Bedils* Case. Ibidem a. 4.

45 Seisin of any part of a service (as of part of a Rent, of one dayes work, when it is done or the like) is actual seisin of all to have an Assise: because the service in that case is intire, &c. So if a man make a Lease for life, or a gift in tail, rendring the first yeares a quarter of wheats, and after the yearly Rent of C. S. the seisin of the wheate is the seisin of the Rent, whereupon he may have an Assise: for all is but one intire reservation, &c. *A reservation of a Rent intire.*

Co. l. 4. 33. a. 2. in *Mittons* Case.

46 When the King makes a Sheriffe durante beneplacito, albeit he may determine his Office at his pleasure, yet he cannot determine it in part, as for a Towne, or Hundred, or any other part, nor abridge the Sheriffe of any thing incident or appurtenant to his Office: for the Office is intire, and so ought he to continue in his Intirety without any fraction or diminution whatsoever: unlesse it be by Act of Parliament, or that the King makes any Towne &c. A County of it self, and Constitutes there a Sheriffe, and all things incident to a Sheriffe within the said Towne; but he cannot determine the Office of the Sheriffe, or any part thereof without, but by constituting a new Sheriffe, viz. for the execution and administration of Justice: because the Office is in its nature intire, &c. *The Sheriffs Office intire.*

Co. lib. 4. 52. *Rawlins* Case.

47 A possessed of an house, whereunto a stable was adjoyning, for the terme of 30 yeares, by deed indented in consideration of 25 l. fine to be afterwards paid, demised the same house and stable to B. for 21 yeares, rendring unto A. 24 l. per annum quarterly, and also 5 l. quarterly at the same feasts, untill the same 25 l. fine should be paid, upon condition that if the said summe of 25 l. or the said Rent should be arrear at any Feast &c. that then it should be Lawfull for A. to re-enter: And afterwards and before any day of payement B. re-demiseth the said stable unto A. for 10 yeares, who entred, and after the Rent of 24 l. per annum is arrears, and Lawfully remained, and also the 5 l. parcell of the summe in grosse was not paid: In this case, the whole Condition, as also the re-entry of A. is suspended: For albeit the condition stands upon two parts in the disjunctive, viz. Either for the payment of Rent, or of a summe in grosse (which was collaterall) yet in as much as B. re-demised part of the demise to A. (viz. the stable) whereunto A. entred, and the Rent was hereby suspended, and hereupon the intire condition, both as to the Collaterall summe as also to the said Rent, was likewise suspended: because although the condition comprehend two severall things in the disjunctive of two severall natures, viz. The one a Rent issuing out of the land, which is incident to the reversion; and may be suspended by the inter-mealing with the land: the other matter collateral to the land, which cannot be suspended by the said re-demise: yet here there are not severall conditions, but one intire condition, which referres to two severall branches: and therefore being suspended in part it is suspended in all: And that the condition was intire, it appeares by the Conclusion thereof, viz. that for the non-payment of the one or of the other, it should be Lawfull for the Lessor to re-enter into all the land: so that it is but one intire Condition and one intire entry, which is not by the Acts of the Parties to be apportioned or devided &c. The like case was anjudged p. 27 El. Rot. 185. inter Brigheman and Somerford. *A proviso intire.*

Co. lib. 4. 94. b. 2. in *Slades* Case.

48 A. and B. Bargaine together, that A. for a certaine consideration shall deliver unto B. yearly 20 quarters of Barley during the life of B. in this *Annuall payment of wha*

this caſe if A. faileth of any one yeares payment B. cannot have an action of Debt for it untill all the yeares be incurred; becauſe an Action of Debt is intire and cannot be ſued above once; How beit he may in that caſe have an Action upon the caſe for it, &c. as it was adjudged in the caſe betweene Redman and Pecke 2. & 3. P. & M. Dier. 113.

diſolon 49 A Condition annexed to an Eſtate is ſo intire, that it will not admit any ſeperance from the Eſtate, unto which it is annexed without the diſtruction of it, and being annull as to ſome perſons, or for part, it is annulled for all; As if A. demiſe Land to B. and his Aſſignes, with condition, that neither B. nor his Aſſignes ſhall alien without the Licence of A. If A. give B. Licence to alien the Land, to whom he pleaſeth, and he Aſſignes the Leaſe to C, neither C. nor any after-aſſigne is bound by that condition; but the Condition is thereby abſolutely determined; ſo that no alienation, which may be made afterwards ſhall be a breach of the Condition, or give cauſe of entry to the Leſſor; for the Leſſor cannot diſpence with an alienation for one time, and yet the ſame Eſtate remaine ſtill ſubject to the condition afterwards: And albeit the proviſo be, that neither the Leſſor nor his Aſſignes ſhall alien, yet when the Leſſor licenceth the Leſſee to alien, he ſhall never defeate, by force of that proviſo, the term, which is abſolutely alienes by his Licence; for the Aſſignee, (and ſo by conſequent every ſubſequent Aſſignee afterwards) ſhall retaine it in the ſame plight, that it was in, when the Leſſee granted it, then it was abſolute and ſeverd from any condition, &c. And as the diſpenſation to one is a diſpenſation to all other ſubſequent Aſſignees, ſo it is alſo as to perſons; for in caſe of Jointure, where the Eſtate is in more then one, a Licence of Alienig granted to one ſhall enure to all, as it was adjudged in Crompton and Leeds caſe, T. 28. E. Rot. 256. in the Co. Pl. Likewiſe if the Leſſor Licence the Leſſee to alien part of the Land, he may alien the reſt or any part thereof without Licence; becauſe a Condition cannot be divided, or apportioned by the Act of the Parties, as it was holden by Popham Cl. Inſtit. againſt the opinion in Dier. 16 E. 334. Co. l. 4. 119. b. 4. in Dumport Caſe.

le lie; 50 A Leaſe was made by Indenture for 21 yeares of 3 Mannors Co. lib. 4. 120. A. B. and C. rendring per annum. for A. 6. l. for B. 5 l. and for C. 10 l. to be paid at a place out of the Land, with a condition of Re-entry into all the three Mannors for Default of payment of the ſaid Rents, or any of them; and after the Leſſor by deed indented and inrolled bargaines and ſels the Reverſion of an houſe and 40 acres of Land, parcell of the ſaid Mannor of A. to one and his heirs and afterwards by another deed indented and inrolled bargaines and ſels all the reſtone to another and his heires, and whether the ſecond bargaines might enter for the Condition broken or not, was the Queſtion; And it was adjudged (P. 14 E. Rot. 1015) that he could not enter for the condition broken; becauſe the Condition being intire cannot be apportioned by the Act of the Parties, but, by the ſeverance of part of the reverſion, was utterly deſtroyed, &c. a 4. in Dumports Caſe.

ſchange 51 If A. give in exchange 3 acres to B. for other three acres, and e, being a after one acre is evicted from B in this caſe all the exchange is defeated, tion in and B. may enter into all his Land; for albeit the exchange had been good, if A. had given but two acres, or one Acre, or leſſe, yet in as much as all the three acres were given in exchange for the other, and the Condition (which was implyed in the exchange) was intire, upon the eviction of that one acre the condition in Law is broken, and thereupon entry given into all; for it is the properties of a Condition to defeat all, and not a part onely, except the Condition be reſtrained onely Co. l. 4. 121. 4. b. 2. in Bayſers Caſe.

to a part, as it is not in this caſe. And therefore there is no diverſitie between an intire thing (as a Mannor) and a thing, that is ſeverable, in point of exchange, &c. There is the ſame Law alſo of a partition, as it is agreed in 13 E. 4. 3. f. & 42. Aſſ. pl. 22. in the Earle of Pembrooks Caſe.

Co. l. 4. 121. a & 122. b. *Baſtards* Caſe. 52. Baron ſeiſed of the Mannor of Dale to the uſe of himſelfe and his Feme, and of the heirs of the body of the Baron, levies a fine to A. who enfeoffes B. who enfeoffes C. C. exchanges the ſaid Mannor of Dale with B. for the Mannor of Sale, the Baron dies, the Feme enters into the Mannor of Dale; In this caſe B. may re-enter into the Mannor of Sale; for as when the whole Eſtate in part is evicted, all the exchange is defeated, ſo here, when the Eſtate of the Frank-tenant for the life of the Feme, which is but parcell of the Eſtate, is evicted in all the Land, or in part, the whole exchange is thereby defeated, by reaſon of the condition in Law annexed unto it; for albeit a reverſion expectant upon an Eſtate for life may be given in exchange for Land in poſſeſſion, yet when C. was ſeiſed of the Mannor of Dale in his Demeſne as of Fee, and gives that in poſſeſſion unto B. in exchange, as aforeſaid, after that the Feme enters and evicts the Eſtate for life, &c. B. may re-enter into the whole Mannor of Sale, which was ſo given in exchange; becauſe the Condition in Law (annexed to the exchange) being broken for part of the Eſtate, is defeated for all; &c. So likewiſe if he in the reverſion in Fee diſſeiſeth his Leſſee for life, and then gives that Land in exchange to another for other Land, and after the Leſſee for life enters; In that caſe alſo the other may re-enter into his Land again, and hereby defeat the whole exchange; becauſe the implied Condition is in his nature un-ſeverable and intire. The like.

Co. lib. 5. 11. *Ives* Caſe. 53. A lets to B. the Mannor of Dale for 30 yeares, except all wood and under-wood growing and being upon the Mannor, after A. lets to B. all the wood & underwood, &c. for 62 yeares without impeachment of waſt, Any after A. lets to B the Mannor for 30 yeares from the expiration of the former eaſe of 30 yeares, the firſt 30 yeares expire, the Leſſee cut the trees, the Leſſor brings an Action of waſt; And Judgement was given for the Plaintife for by the accept of the future Leaſe, the leaſe for 62 yeares was preſently and actually ſurrendred, becauſe it could not be ſurrendred in part, and in force for the reſidue of the term; and the Leſſee by ſuch acceptance affirmed the Leſſor to have ability to make a new leaſe, which he could not do ſo long as the firſt leaſe ſtood in force: ſo likewiſe if the Leſſee for 20 yeares accept a leaſe for three yeares to begin ten yeares after, this is a preſent ſurrender of the whole term; for the laſt ten yeares cannot be ſurrendred, and the firſt ten ſtill remain in eſſe, becauſe that would make fractions, of the term, which is in its nature intire: Neither can he, that hath a leaſe for 20 yeares ſurrender the laſt ten yeares by any expreſſe ſurrender, having unto him the firſt ten yeares, &c. A ſurrender intire.

Co. lib. 5. 11. b. 1. & 56. a. 1. *Knights* Caſe. 54. Two Houſes are let to one man, the one for 4 l. Rent per annum the other for 20. s. per annum, with proviſo, that if the ſaid Rent of 5. l. be behind in part or in all, then the Leſſor ſhall re-enter; theſe Houſes afterwards eſcheate to the King, who after grants that, upon which the 20. s per annum is reſerved, to I. S. the Rent thereof is arreare; In this caſe, the Patentee cannot enter for the Condition broken; becauſe albeit the Rents were ſeverall, yet the Condition was intire by the expreſſe reſervation, and gives an intire re-entry into all for default of payment of any part of the Rent; and therefore by the ſeverance of any part of the reverſion all the condition (as to all common perſons) is deſtroyed; Howbeit the whole condition remaines intirely An intire condition.

intirely in the King with the reverſion of the other Houſe, and that is in reſpect of his prerogative, &c.

whole one in-y.

55 The Leſſee for yeares brings an ejectione firme, the Defendant ſaith that before the leaſe, the Leſſor bargained and ſold to him in Fee by indenture inrolled within ſix moneths, whereby he was ſeiſed, untill diſſeiſed by the Leſſor, who let the land, &c. The Plaintife pleades that the bargaine, &c. was upon Condition, which was broken, &c. the Defendant demurres, and ſheweth cauſe according to the Statute, viz. Becauſe the Plaintife ſhewed not forth the Inventure of the Condition; And in this caſe judgement was given for the Plaintife; becauſe when any deed is ſhewed in Court, the deed by judgement of Law remaines in Court all the term, in which it is ſhewed; but at the end of the term if the deed be not denied, then the Law adjudgeth it in the Cuſtodie of the Partie, to whom it belongs; for all the term in Law is but one day: and therefore the deed ſhall be intended to remaine in Court all the terme, in which it is ſhewed; for the term in that caſe is Intire, and will admit of no fractions; And ſo by conſequent the Plaintife may in ſuch caſe take advantage of the Condition compriſed in the deed ſhewed forth by the Defendant himſelfe, ſo he do it in the ſame term, as afore ſaid, &c. Co. lib. 5. 74. b. 1. in *Wymarks* Caſe.

dit and ages in-t.

56 Goods were caſt ſuper arenas, aqua ſalſa minimè coopertas, Manerii de B. infrà fluxum & refluxum maris, and another parcell were floting ſuper aquas maris refluent. ex arenis ejuſdem Manerii infrà fluxum, &c. The Patentee of the Manor and Fee of Holderneſſe in Com. Ebor. brings an Action of Treſpaſſe againſt him, that ſeiſed them to the uſe of the Lord Admiral: And the Jurie aſſeſſed damages intirely for all; In this caſe judgement was given againſt the Plaintife; becauſe the Goods ſo floting upon the Waters (called Flotſam) do not of right belong to him, but to the Lord Admiral; And therefore the Verdict being intire, (viz. given for both) and ſo the damages of the wrecke being thereby made un-ſeverable from thoſe of the Flotſam, the Plaintife could take nothing by his writ. So in Treſpaſſe (21 H. 7. 34. b.) the Defendant juſtifies for part, and Pleads not guilty for the reſtone, the Jury inquire of one of the things, and tax damages intirely; here, the whole Court (againſt Fineux) adjudged it not good, 22 E. Dier. 369. accord. M. 14 & 15 El. in Treſpas by Pooly for his Servant beaten and his Cloſe broken, and ſaid not, per quod ſervitium amiſit, upon non culp. the Jury aſſeſſed damages intirely, and it was adjudged not good. See 9 H. 7. 3. M. 30, & 31 El. inter Moore & Bedle in Aſſumpſit, where the Plaintife layes two breaches, whereof one was inſufficient, upon non aſſumpſit the Jury aſſeſſed damages intirely; And in this caſe there were two reſolutions, 1 It ſhall be intended, that they gave damages for both; 2 Becauſe the Plaintife had no cauſe for one of the allegations, the judgement was to be reverſed in the Exchequer Chamber, &c. Co. l. 5. 108. a. 30 in Sir *Henry Conſtables* Caſe.

n ſervi-

57 Concerning intire Services, and where they may be apportioned, and where not, ſee Bruertons Caſe, per tout, Co. l. 6. 1. and John Talbots Caſe in the 8. Rep. fol. 108.

ſany in-

Co. lib. 6. 1. in *Bruertons* Caſe.

58 Warrantie is an Intire thing, which will not ſuffer partition, but ſhall always either intirely remaine, or be intirely annulled: and therefore, if there be two Joyntenants with Warrantie, and petition is made between them by judgement, in a writ de partitione facienda, by force of the Statute of 31 H. 8. cap. 1. in this caſe, the Warrantie ſhall remaine to each of them intirely; becauſe upon the Kings writ they are compellable by the Statute (unto which every one is Partie) to make partition, and ſo the Partie perſuing his remedie according to Co. lib. 6. 126. *Morrices* Caſe.

to the Act ſhall not receiue any preiudice by the operation of the ſame Act, unto which euery one is partie: but if they had made partition by deed, by conſent (ſince the ſaid Act,) albeit they were compellable by writ to make partition, yet in as much as they did not purſue the Statute to make the partition by writ, for that cauſe ſuch partition remaines as it was before at the Common Law, and (by conſequent) the Warrantie is gone, (as it was agréed, in 29 El. 3. tit. Garr.) becauſe the Warrantie is indiuiſible, and cannot be parted as the Land may.

Co. lib. 6. 23. The Marqu. of *Wincheſters* Caſe.

59 The Marqueſſe of Wincheſter by will (as it was ſuppoſed,) deuiſed diuers Lands, iewels, &c. To his reputed Sonnes, and alſo made them Executors; They endeauouring to proue this will in the prerogatiue Court, A ſuggeſtion was framed in the name of the Marqueſſe his Sonne and heir, to haue a prohibition out of the Kings Bench, ſuppoſing that he was not of ſanæ memoriæ at the time of the making of the will, which was pleaded in the Spiritual Court, in Arreſt of the probat of the will, and thereupon a motion was made in the Kings Bench to haue prohibition generally to ſtay all the proceedings in the Eccleſiaſticall Court, viz. as well for the Legacies and bequeſts in the perſonalty, as for the Lands; and the reaſon and ground of that motion was; for that the will concerning the Lands, and the Teſtament concerning the goods, being all mixed together in one intire will, if thoſe in the Eccleſiaſticall Court ſhould proceed concerning the Teſtament of the goods, that would preiudice the triall in the Kings Bench; for if he was of ſanæ memoriæ at the making of the Teſtament of the goods, he could not be of non ſanæ memoriæ at the time of the making of the will of the Land, both being made at one and the ſame inſtant; And the Common Law ought to determine, what ſhall be ſaid to be ſanæ and perfectæ memoriæ at the time of making the will concerning the Land, and therefore the prohibition ſhall be general, quod fuit conceſſum per totam Curiam. And in the Argument of this caſe the Lord Coke, being then Attorney generall cited a caſe between L. Loyde and L. Loyde, in 38, & 39 El. in the K. B. where it was ruled accordingly in terminis terminantibus, and that no Conſultation ſhould be granted for any part, vntill the whole matter ſhould be tried in the ſame Court.

A will of Lands, a Teſtament goods be one writ are intir.

Co. lib. 8. 51. b. 3. in *Syms's* Caſe

60 In formedon in remainder the Tenant pleads in barre collateral Warrantie, deſcended vpon the Anceſtor, vnto whom the remainder was made, the demandant ſaith, that the ſaid Warrantie deſcended alſo vpon B. another Coheire of the Warrantie, and that the Warrantie quoad medietatem tantum deſcended vpon the demandant: nevertheleſſe it was reſolued per totam curiam, that the demandant was barred for the whole; for the Warrantie in that caſe is intire, and extends to all the Land, and is a barre to euery perſon, vpon whom it deſcends, of all the right, which he hath in the Land, and if each of them had right in the Land ioyntly or ſeuerally, each of them is barred, and if one of them onely had right and the other nothing, he that hath the ſole right ſhall be barred of all, &c. vide Pl. ibid. & 5 E. 2. Garr. 78. 4 H. 7. 18. b. 6 E. 3. 50. 11 H. 4. 20. 41 E. 3. 3. 10 H. 7. 13.

Warrantie tire.

Co. l. 8. 105. b. 1. in *John Talbots* Caſe.

61 Diuers ſeruices, (by reaſon of their Intreneſſe) vpon alienation of parcell of the tenancie ſhall be multiplied, ſometimes alſo the Lord ſhall be contented with one intire ſeruice amongſt all the ſeuerall alienées; And ſometimes vpon the Lords purchaſe of parcel therof ſuch a ſeruice ſhall be either totally extinct, or elſe totally preſerued: And therefore when an intire thing (be it a valuable Chattel, as a Horſe, Oxe, a golden Spurre, a Bow and arrowes, a Sword,

Intire ſeru

a Sword, a Gantlet onely, or the like, or matters of pleasure, as a Falcon, or other Hawke, a Dog, or say other things of pleasure) shall be rendred or paid by the Tenant to the Lord: in that case the intire service by the alienation of parcel of the Tenancie shall be multiplied, so that each particular alienee shall render the whole service, and yet upon purchase of parcel by the Lord the whole is extinct, as it was resolved in Bruertons Case in the 6. Rep. fol. 1. So likewise homage and fealty by alienation of parcel shall intirely multiply: because when the Tenant makes homage or fealty, he doth them for all the tenements, which he holds of the Lord, so that those services extend to the intire Tenancie, and to every part thereof, and albeit the Lord purchase parcel, yet the homage and fealtie do still remaine for the residue: also Knight-service, which is an intire service to be performed by the body of a man, shall be multiplied upon alienation of parcel, and albeit the Lord purchase parcel, yet it shall not be extinct, but shall intirely remaine for the residue, quia par bono publico, & defensione regni. And the escuage shall be apportioned: But the personal service to be Sewer, Carver, Butler, &c. or when the Tenant is held by his Tenure ad convivandum Dominum suum & Familiam suam semel in Anno; & ad equitandum cum Domino suo in Comitatu N. sumptibus suis propriis, &c. (vide 10 E. 3. 23. in John de Bromptons Case) by alienation of parcel shall not be apportioned, or multiplyed, for such services, which are for the private Benefit of the Lord and are personal: to be done by one man, shall not be multiplied: Because they are to be personally performed by one man onely, and multiplication of them would be a charge and prejudice to the Lord: And these also in regard of their intermesse by the Lords purchase of parcel shall be totally extinct: So it is also when the Tenure is to performe some manual labour, as to cover or repaire the Hall of the Lord, to make or repaire the Pale of his parke, to plow or sow his Demesnes, to reape or cut downe his graine, or the like, these services and others like unto them shall not be multiplied, albeit parcel of the Tenancie be alienes, yet amongst all the alienees the whole service shall be performed; and if the Lord purchase parcel, the whole shall be extinct, &c. There is the like Law also in Heriot-service: For by alienation of parcel of the Tenancie it multiplies, and by the Lords purchase of parcel the whole service is extinct: It is otherwise of Heriot-custome: For in that Case notwithstanding the Lords purchase of parcel, the intire service remaines for the residue, because such custome is incident to the whole Land, and also to every Part thereof, &c.

62 In an Ejectione firmæ against two or more, an accord and Satisfaction for one shall also discharge all the other Ejectors and Trespassors: for that action is intire, and cannot be discharged as to one, and yet prosecuted against the rest. Co. lib. 9. 79. b. 4. in *Henry Peytoes* Case.

63 There is the King Lord Paramont, the Meine, who holds by Knight-service in Capite, and Tenant paravaile in Soccage: the Meine Grants the Meinaltie to the use of himselfe for life, and after to the use of the Tenant paravaile in taile: In this Case the meinaltie is not suspended during the life of the Meine by force of that remainder in taile: for, a remainder in taile or for life expectant upon an estate for life, or in taile, shall never suspend a meinaltie, Seigniory, Rent, &c. because albeit the remainder vests presently, yet that cannot suspend the present Frank-tenement Co. l. 9. 134. b. 3. in *Ascoughs* Case.

of the Rent during the life of the first Tenant for life, who is indeed the true Tenant to the Lord or to the reversioner, upon whom avowry shall be made, &c. and as a Signiory, Rent, &c. cannot be suspended in part, and in esse for part, in respect of the Land, out of which it is issuing, so neither can a Signiory, Rent, &c. be suspended in remainder, and yet be in esse for a particular Estate in possession, for then necessarily there must insue fractions of Estates, and particular Estates shall be created without Deanors or Lessors against the Rules and Maxims of the Law, &c. It is otherwise, if the mesne grant his mesnaltie to one for life, or in taile, the remainder to the Tenant peravaile in Fee; for in that case the mesnalty is totally extinct; because there the Tenant peravaile hath as high an Estate in the inheritance of the Mesnaltie, as he hath in the Tenancie, neither is there, in that case, any possibilitie of reviving the Mesnaltie; and here also the mesnaltie is not extinct for the Inheritance, and in esse for the particular Estate for life or in taile in possession, but the mesnaltie by the remainder in Fee is extinct in all; for otherwise this absurdity would follow; that there would be a Fee-simple of the Tenancie peravaile, and also a Fee-simple of Signiory perament, any but an Estate for life or in taile onely of the mesnaltie; and so a Tenancie in Fee-simple shall be onely holden of a mesnaltie for life or in taile, and a Signiorie in Fee shall be issuing out of a mesnaltie for life or in taile onely, which is impossible, and can by no meanes be, &c. Vide 3 H. 6. 1. 15 E. 4. 12.

Co. l. 10. 128. a. 4. in *Clun's* Case.

64 If Tenant for life make a Lease for yeares rendring Rent at Easter, and the Lesse occupie for three quarters of the yeare, and in the last quarter before Easter the Tenant for life dies, here shall be no apportionment of Rent for three quarters of the yeare, because the time is intire; and in respect thereof there shall be no apportionment, neither yet was the Rent put before Easter. Howbeit in the same case if part of the land had been evicted before Easter, and that Feast had incurred in the life of the Lessor, there shall be an apportionment of the Rent; but not in respect of the time, which both still continues but in regard, that part of the Land demised is evicted, &c. Vide 27 E. 3. 84. b.

A term intire.

Co. l. 10. 134. b. 3. in *Read* and *Redmans* Case.

65 In Actions meerly personal or personal and in some sort mixt with the realtie, in which intire things are demanded, if there be divers Plaintiffes, and one be summoned and severed, the death of him, which is so summoned and severed (where the intire thing survives to the other) shall not abate the writ, as in a writ of ward of the body, or the like, &c.

Actions Intire.

Co. lib. 11. 4. a. 2. in *Auditor Curles* Case.

66 The Office of Auditors of the Court of Wards (according to Statute of 32 H. 8. cap. 46.) cannot be granted in reversion; because they two make up one Judge or Judicial Officer of that Court, and as none can give judgement of things in futuro, so neither may any be admitted a judge in futuro, according to the Rule, Officia judicialia non concedantur antequam vacent; And besides, great inconvenience might insue thereupon; for he, that is at the time of the grant sufficient to execute it, may perhaps, when it falls, be un-capable and un-sufficient for it: And albeit that Office be onely in part judicial and in part ministerial, and ministerial Offices may be granted in reversion; yet in as much as two persons have both of them but one Office, & are as one Officer, that Office is by the said Act made so intire, that it cannot possibly be divided; for, the King cannot make two Auditors of the ministerial Office, and other two to execute the Judicial part, because then there would be four persons, which the Act restraines to two; neither yet can

The Office Auditor of Court of intire.

can the King make one Perſon to have the judicial voice, and the other the miniſterial Office; For then there would be two Officers, and two Offices, whereas the Act makes but one Officer; and then alſo one of them ſhall have a diſtinct Office and voice, whereas the Act joynes them together in two Perſons; And therefore in as much as the miniſterial part is ſo united with the judicial part, and that joyntly in two Perſons, which make up one intire Officer, that there is no poſſibility of ſevering the one from the other, as the judicial part cannot be granted in reverſion, ſo neither, can the miniſterial, &c.

Treſpas intire though againſt many. 67 When in Treſpas againſt divers Defendants, they plead non culp. or ſeveral pleas, and the Jury finds for the Plaintife in all, the Jurors cannot aſſeſſe ſeveral damages againſt the Defendants; becauſe it is but one Treſpas, and alſo made joynt by the Plaintifs writ and count; And albeit one of them be the moſt malicious, and de facto doth the greateſt wrong, yet all coming forth to do an unlawful Act, and being all of one partie, the Act of one is the Act of all, that are preſent and of the ſame partie: And therefore in ſuch caſe if the hand of one of them onely gives a mortall wound, whereupon death followes, that is murder in all, that are preſent and of the ſame partie, albeit the others intended not to give a wound ſo mortal, as appeares in Mekallies Caſe in the 9. Report. Co. lib. 11. b. 1. in S *John Heydon's* Caſe. Ibid. 7. a. 2. & 43 El. Rotulo 1694. inter Auſtr. Pl. and *Willard* and Ald. *Def.*

Coparcenery joint. 68 If two Coparceners Tenants in taile loſe by default, albeit the default of the one is not the default of the other, yet in reſpect of the intireneſſe of their eſtate they ſhall joyne in a Quod ei deforciat, &c. M. 46. 3 E. F.N.B. 155. h

An execution intire. 69 If an execution be ſued of the body and of the land, and afterward the Conuſee enfeoffs the Conuſe of parcel of the land, or ſurrenders parcel of the land unto him, or the fee-ſimple of parcel thereof deſcends upon him, in all theſe caſes, both body and land are diſcharged; for by the execution againſt the body & land, the land was de facto charged and ſo become debtor, and by the feofment, ſurrender, or deſcent the land was alſo diſcharged; becauſe a diſcharge of part of a thing in execution is a diſcharge of all, be it by the Act of the partie, or by Act of Law; for the duty being perſonal is intire and ſo is the execution intire alſo, &c. Pl. Co. *Roſſes* Caſe.

A Mannor intire. 70 It is ordained by the Statute of the 25. E. 3. cap. 16. That by the execution of non-tenure of parcel no writ ſhall abate, but onely for the quantitie of the non-tenure, which is alledged; Nevertheleſſe, in a præcipe quod reddat of a Mannor; if the Tenant plead non-tenure of parcel, the whole writ ſhall abate; becauſe a Mannor is an intire thing; And therefore the Judges have taken it to be againſt reaſon, that by his Wantand of the whole Mannor he ſhould recover againſt him, that is but tenant of parcel thereof; for which cauſe they have expounded that Statute onely to extend to writs, where things demanded are ſeveral, as acres are, and not to extend to writts, where the things demanded are intire. Pl. Co. 109. b. 3. in *Fulmerſtons* Caſe.

Venire facias intire. 71 In an appeale of death againſt divers, they plead not guilty, any one joynt venire facias, is awarded; if one challenge peremptorily, he ſhall be drawne againſt all; otherwiſe it is of ſeverall venire facias. Co. Inſt. p. 2. 256. b. 3.

Obligation intire. 72 In 9 H. 5. fol. 15. One brings a writ of Debt of 20 l. againſt another and counts upon an obligation of the ſame ſumme, the Defendant pleads, that he was a lay man, and knew not letters, and he acknowledged himſelfe to be bound to the Plaintife by the ſame deed in 20 s. which he hath payd and thereof ſhewed an Acquittance and as to the reſidue of the ſumme in the ſaid Obligation, Co. lib. 11. 27. b. 2. in *Henry Pigots* Caſe.

obligation nient son fait; And in this case, the Obligation was adjudged void for all; because, the summe being intire, it could not be good for 20.s. and void for the residue of 20. l. but must needes be void for all.

Co. l. 11. 27. b. 3 & 28. a. 4. in *Henry Pigots* Case.

A deed intire

73 If there be two absolute and diſtinct Clauſes or Covenants in a deed, and one of them is read to a man not letterd, and the other not, it is good for the Clauſe or Covenant that was read, and void for the other: Howbeit if a deed containe divers such absolute and diſtinct Clauſes or Covenants, if any one of them be altered by addition, interlineation, or razure, this Miſdeſeasance ex poſt facto ſhall make the whole deed void (as it is holden in 14 H. 8. 25, 26.) For albeit they are ſeverall Clauſes or Covenants, yet it is but one intire deed. 3 H. 7. 5. If two be bound in an obligation, and after the ſeal of one of them is broken, this miſ-deſeasance ex poſt facto ſhall make the obligation void againſt both; because it is an intire thing, that will not admit ſeverance, &c.

Co. l. 5. part 2. b. 2. *Clayton's* Case.

Dayes are intire and admit no fraſtions.

74 If Indentures of demiſe be ingroſſed bearing date the 25 of May, to have and hold for three yeares from hence forth, and they are after-wards deliverd at 4 of the Clocke in the after-noone upon the 20 day of June then next following; In this Caſe, the Leaſe ſhall commence upon the day of the delivery; for, from hence forth ſhall have reference to the delivery (when the deed took effect) and not to the date, and it ſhall not begin immediately after the delivery, viz. at 4 of the clocke in the after-noone, but that whole day ſhall be part of the demiſe; because a day is (in judgement of Law) an intire thing, that will admit no fractions, to avoid uncertainties, which are always the mother of contention. And therefore the day of delivery is taken inclusivè viz. to the firſt day of the demiſe; ſo it is alſo if a Leaſe be limited to begin à confectione, It is otherwiſe, when the leaſe is to begin a die confectionis, or à die datus; for (in that caſe) the day it ſelf is excluded, &c. And ſo the doubt in 12 E. Dier 286. is well explained, and with this reſolution agrees 14 E. Dier 307. The words of the ſtatute of Inrolements are (within ſix moneths after the date of the ſame writings, &c.) and it was adjudged (T. 21 E. in Co. Ba.) that if ſuch writings have date, the ſix moneths ſhall be accompted from the date, but if they want date, then from the delivery; And therefore when the ſix moneths are accompted from the date, the day of the date is excluded as it was adjudged P. 4 E. Rot. 812. for, from the date, and from the day of the date are all one, because (in that caſe) the intire day of the date is excluded; But it ſeemes by the reſolution above-ſaid, when they are accounted from the delivery, the day of the delivery is to be totally included within the accompt, cauſâ quâ ſuprà.

St. 27 H. 8. cap. 16.

Co. l. 7. 8. a. the Earle of *Bedfords* Case.

An advowſon intire.

75 Tenant in taile maketh Leaſe of Land holden voidable by the ſame, and dies, his heire under age, the King as guardian may during the minage avoide that Leaſe, but it may be recontinued by the heires acceptance of the Rent after his full age: So it is alſo where a voidable Leaſe is made by a Biſhop; for albeit the King during the Vacancie may avoid it, yet the ſucceſſor by acceptance may recontinue it: because in theſe Caſes the terme is partable, and may for part be avoided, and for the reſidue be continued: It is otherwiſe of intire things, when the whole intereſt is avoided: as if the Patron of a Church grant the proxime avoidance to another, and after and before the Statute of 13 E. the Parſon, Patron, Ordinarie make a Leaſe for yeares rendring Rent, and the Parſon dies, the grantee preſents one, who is admitted inſtituted and inducted and dies, this Leaſe is avoided abſolutely in all, and ſhall not hold good againſt the ſecond ſucceſſor: So (2 E. 3. 8.) an advowſon by Licence is granted to a Prior and

2 E. 3. 8.

his

his Successours, and is afterwards appropriate to the Prior, &c. here if the Feme and the grantor be endowed of the Advowson and her Clerke invested, the appropriation is defeated for ever, &c. So if a Feme covert (as a Feme sole) levie a fine, by the entry of the Bar on all is avoided, 7 H. 4. 23. yet if the Baron has not entred, it had bound the Feme and her heires.

Purcinerie tion of mmuls

76 If the Coparcenery in part of the Purparty be evicted, that shall make the partition of the whole, be it of a Manor, that is intire, or of acres of ground, or the like, that are several; for the partition (in that Case) implyeth for this purpose both a Warrantie, and a Condition in Law, and either of them is intire, and giveth an entry (in this Case) to the whole; And so it was resolved in Bustards Case Co. l. 4. 121. both in the Case of exchange and partition. Co. Inst. part 1. 173. b. 4. Co. l. 4. 121. 12. *Bustards* Case.

ge in ginnacie.

77 If an Earldome, Baronie, or other Peerage descend to Coparteners, the Lands shall be divided, as amongst other Parteners, but the dignitie (being intire) cannot be parted, neither shall it descend to the eldest alone; but (in such Case) the King (who is the Soveraigne of honor and dignitie) may conferre it upon which of the Coheirs he pleaze. Co. Inst. part 2. 156. a. 3.

County in-

78 A writ of Dower is brought against the Alience of the Baron, and he voucheth the heire; In this Case, the Demandant may testifie that the heire hath Lands descended unto him in the same County (for to another County the writ shall doth not extend) and may pray, that he may be endowed of his Estate: So in 4 E. 4. 36. & 6 E. 3. 11. The Tenant in a writ of Dower vouched the heire of the Baron, and the Demandant testifieth that he hath Lands by descent, &c. in the same County, and judgement was given against the heire: But if he has none there, it should have been given against the Tenant. Vide supra 55. 110. Co. lib. 9. 17. b. 2. in *Anne Bevigfields* Case.

n intire con-dition.

79 If there be an obligation with Condition, that if I infeoffe another before such a Feast of the Manor of Dale, discharged of all manner of Rents; In this Case, if a stranger hath a Rent issuing out of the said Manor, and I make a Feoffment, and at another day afterwards and before the Feast I purchase a release of the stranger, here the Condition is not observed, in as much as the Manor ought to have bin discharged at the time of the Feoffment simul & semel, because the Condition was intire: But if the Condition be, that I pay 10. l. build an house, and goe of your errand to Paul before such a Feast; In such Case, I may well doe these Acts upon several dayes before the Feast, because the Condition was not intire. Dier. 16. 88. 28 H. 8.

se to two,

80 If a Lease be made to two for lives terme of their, and they make partition, and the one dies, his part shall revert to the Lessor, because their lives are several, the life of the one not being the life of the other: But in a Lease be made to two for term of yeares, with proviso, that if the Lessees die within the term, that then the term shall cease, and they make partition, or out of them, alienes his part, and dies; In this Case the Lessor cannot enter into his part that dies, but the grantee or the executors of the Lessee (if he made an alienation) shall have his part during the life of the Survivor; because the terms of yeares is intire, and cannot cease as to one, and continue to the other. Dier. 67. a 18. 3 E. 6.

ise.

81 An Honor is intire as well as a County or Manor, and therefore a distresse taken in the County of Wilts in a place which is parcel of the Honor of Wallingford (the Castel and Court whereof is within the County of Berk) was driven to that Castel and there impounded and upon a replevin delivered (since the Statute of 1, 2. P. M. 12.) and held good; For afterwards at the suit of the Defendant the Plaintiff was Dier. 168. 20. 1 El.

was removed by an Accedas ad Curiam directed to the Sheriffe of Oxon, and the Plaintiffe counted of the taking in prædicto loco in Com. Wilts, and all held good per Curiam.

Dier 247. 44. 6 El. 82 A generall pardon diſcharged all poſt fines under 6 l. And for the fine there were two writs of Covenant, but onely one concord of Lands in two Counties, and the Poſt-fine being extracted intirely did exceed 6 l. but being divided it was under, which diviſion Sank-ford requeſted; but the Concord being intire, the Court adjudged the Poſt-fine but one alſo. Poſt-fine.

Dier 246. 70. 8 El. 83 In a Replegiare againſt a Biſhop and others, they were at ſeveral iſſues, but one venire facias was awarded, the Biſhop challengeth the Array, becauſe there was no Knight; and this challenge was held good for all, becauſe the venire facias was intire, albeit the iſſues were ſeveral. Challenge.

Dier 256. 11. 9 El. 84 Tenant for life ſurrenders the one Moitie, and the Lord grants the whole Land to a ſtranger, Habendum the one Moitie for life, and the other for 40 yeares after the death of the Tenant for life, rendring 40 l. per annum. In this Caſe the Lord may diſtraine and avow for the whole Rent preſently, albeit the one Moitie be but terra revertens, and the reaſon is for that the reſervation is intire. Intire reſervation.

Dier 260. 22. 9 El. 85 In Debt upon a leaſe for yeares of ſeveral parcels, the parties are at iſſue upon non dimiſit, and it was found a demiſe of all but one parcel, and damages aſſeſſed; Howbeit the Plaintiffe could not have judgement, becauſe the Leaſe and Count were intire, and did containe all. *Non demiſit* pleaded.

Hob. 66. Cox and *Jennor.* 86 Where two commit Treſpaſs, a releaſe to one of them of all actions real and perſonal, enures to both, albeit he to whom the releaſe is made, is not party to the ſuit, but is onely mentioned in the declaration with a ſimul cum, &c. becauſe the Treſpaſs is intire, and therefore cannot be releaſed to one, but muſt alſo be releaſed to all, that are guilty thereof. Vide Hob. 70 Parkens Caſe. Treſpaſs.

Ho. 180. *Slowley* and *Sveley.* 87 Where a man hath a perſonal Action againſt two Defendants, if they plead ſeverally, and he be non-ſuite againſt the one, before he hath judgement againſt the other, he ſhall be barred againſt both: for the Treſpas being intire, the non-ſuite worketh in nature of a releaſe of the whole. Treſpaſs.

71 *Argumentum à Diviſione eſt fortiſſimum in Lege.*

Co. Inſt. p. 1. 213. b. 3. 1 An example or two of this Argument you ſhall find in Littleton, whereof the firſt is in Sect. 344. where he puts this Caſe: If a man enfeoffe another upon Condition, that he and his heires ſhall render unto a ſtranger and his heires an annuall Rent of 20 s. &c. and upon failer of payment that the Feoffor and his heires may enter, this is a good Condition, yet the ſumme ſo reſerved cannot be properly called a Rent; For (ſaith he) if it ſhould be a Rent; it ought to be either Rent-ſervice, Rent-charge, or Rent-ſecke, but it is not any of thoſe: For if the ſtranger be once ſeiſed of it, and after be denyed it, he ſhall not have an Aſſiſe for it, becauſe it is not iſſuing out of any Tenements, &c. So that if it be arreare, the ſtranger hath no other remedie, but that the Feoffor or his heirs may enter, and yet if they do enter, then is the Rent gone for ever; And therefore he concludes, that ſuch a charge upon the Lands is not a Rent, but onely a paine layed upon the Tenant of the Land and his heires, that in Caſe payment be not made according to the Indenture, they ſhall loſe the Land by the entry of the Feoffor and his heires, &c. An impoſſible Rent.

2 And-

ate du-
verture.

2 Another example hereof you shall find Sect. 380, & 381. Where to prove that an Estate made to Baron and Feme during the Coverture is an Estate unto them for their two lives, he useth this argument; Every man (saith he) that hath an Estate of Frank-tenement in Lands or tenements, hath an Estate in them, either in Fée, or Fée taile, or for his owne life, or pur auter vie; But the Baron and Feme have not by such a Grant, Fée, nor Fée taile, nor an Estate pur auter vie. Ergo, they have an Estate for the term of their lives: Howbeit that is upon a Condition in Law, viz. If one of them die, or a divorce be sued betwixt them, that then it shall be lawfull for the Lessor or his heires to enter, &c. And in this Case if they make waste the Feoffor and his heires shall have a writ of waste against them, supposing by his writ, Quod tenet ad terminum vitæ, &c. But in his Count he shall declare the special manner of the Lease. Co. ibid. 233. b. 1.

n re-
pounce
void.

3 In Trespas the Defendant justifies, that all Inhabitants in any ancient messuage within the Towne of Dale have used to have Common in the place where, &c. in Sale, ratione condonantiæ, &c. And this Custome was adjudged to be against Law: Because there are onely four kinds of Commons, viz. Appendant, appurtenant, in grosse, and for vicinage, and Common Ratione commorantiæ is none of them, &c. 80. 18. Co. lib. 8. 68. 2. 2. in *Sheppards* Case.

Estate of
Duke of
wall.

4 Edward 3. gave unto the Blacke Prince the Dukedome of Cornwall, &c. Habendum & tenendum eidem Duci, & ipsius & hæredum suorum Regum Angliæ filiis primogenitis, & dicti loci Ducibus in Regno Angliæ hæreditariè successoris, &c. And it was resolved in 3 Jac. in the Princes Case, that that the Prince had an estate of Fée-simple in that Dukedome; because every Estate of Inheritance is either Fée-simple, or Fee-taile, but that Estate could not be Fée-taile; for it is not limited or restrained, (either by expresse words, or by words which do tour amount) to the heires of the body of the Prince; because he that is to inherit that Dukedome, ought to be the first borne Sonne of the heires of the Blacke Prince, be it heir Lineall or Collateral; and such heire ought also to the King of England, &c. Vide infrà 192. 3. Co. lib. 8. 27. a. 2. in the *Princes* Case.

72 The Generals must go before, and the Specials must follow after.

nls be-
Specials.

1 In a writ the General shall be put in demand and in Plaint, before the special, as Land before Pree, Pasture, Wood, Juncarie, Marish, &c. Wood before Alders, Willowes, &c. Finch 24. The Rule of the Register.

73 The more worthy shall be set before the lesser worthy.

es of
ings of
&c.

1 An intire thing shall be demanded before the moitie part or parts, the thing of greater dignitie before that which is of lesse, as a messuage before Land; for albeit Land be of more esteeme then any of the other elements (because it was principally made for man to rest on, which he cannot do in any of the other elements) yet Land builded upon, is more worthy then any other Land, because it is for the habitation of man, and in that respect hath the precedencie to be demanded in the first place in a præcipe; howbeit a Castle shall be demanded before a messuage or Manor; because it is more worthy then they, being Co. Inst. p. 1. 4. 2. 2. & Co. l. 11. 82. 2. 4. *Bowles* Case.

being ordinarily an habitable for a Noble personage, &c. Finch 24. and the Rule in the Register.

Finch. 25. 2 In a Replevin if it be of two chattels, one quicke, and the other dead, the living thing shall be first demanded. Finch 25. and the Rule in the Register. Of Cha

Finch. ibidem. 3 Where one hath the presentment to a Church two turnes, and another the third turne, he that has the third turne, bringing a Quare Impedit shall not begin with his owne turns first, but with the other two turnes. Of presentation to a Benefice.

Co. Inst. part 18. a. 3. 4 My Lord Cooke well observes, that Littleton did worthily begin his Booke with an Estate in Fee-simple, because all other Estates being derived from that, it must needs be the most worthy: for (saith he) A principalioribus & dignioribus est inchoandum. Fee-simple most worthy Estate.

Co. lib. 2. 46. b. 1. in the Arch Bishop of Canterb. Case. 5 By the Statute of 31 H. 8. cap. 13. it was enacted, that all Monasteries, &c. Colledges, &c: which after that Act should happen to be dissolved, renounced, relinquished, forfeited, given up, &c. or by any other mean should come to the Kings highness, &c. should be vested, deemed and judged by authoritie of Parliament in the very actual and real possession of the King, &c. And afterwards by the Act of 1 E. 6. cap. 14. The Colledge of Maid-stone in Kent was given to E. 6. Now the Question was, whether by the General words of the Statute of 31 H. 8. That Colledge was not to be deemed in the Actual possession of E. 6. because the Edict of 1 E. 6. was a mean, by which it came to the Kings hands, and therefore fulfilled these words of that Statute, by any other mean: But it was resolved per totam Curiam, that the Statute of 31 H. 8. could not be so understood; For when the Statute speaks of dissolution, renouncing, relinquishing, forfeiture, giving up, &c. which are inferiour meanes, by which such Religious houses came to the King: then the said last words (by any other mean) cannot be intended of an Act of Parliament, which is the highest manner of conveyance, that may be: And therefore the makers of that Act of 31 H. 8. would have put that in the beginning, and not in the end after other inferiour conveyances, if they had intended to have extended the Act to that: But these words (by any other mean) are to be thus expounded, viz. by any such inferior meanes: So likewise it hath adjudged, that Bishops are not included within the Statute of 13 El. cap. 10. For that Statute begins with Colledges, Deanes and Chapters, Parsons, Vicars, and concludes with these words, and others having spiritual promotions, these last words do not include Bishops, causa qua suprà: So also in the Statute of West. 2. cap. 41. The words whereof are these: Statuit Rex, quòd si Abbates, Priores, Custodes Hospitales & aliarum Domorum Religiosarum, &c. These last words include not Bishops, as it was holden Dier 1, & 2. P. &. M. fol. 109. Causa qua suprà. Words of inferiority exclude the higher de

Co. l. 8. 133. a. 1. in Tawers Case. Et Co. 9. 88. b. 4. in Pinchons Case. 6 An Executor or Administrator ought to execute his Office, and to Administer the goods of the dead lawfully, viz. ought to pay all duties Debts and Legacies in such precedency and order, as he ought to pay them by the Law, and if he vary therefrom, he shall be taken to do in his owne wrong: And therefore he ought first to discharge Judgements, Statutes, and Recognisances, then Debts and Duties by bond, after that Debts upon simple Contract, and last of all Legacies, &c. Vide Co. lib. 5. 28. b. 4. Harrisons Case. Precedency debts lega

Co. l. 8. 157. a. 4. in Blackamores Case. 7 In an Original writ if the Feme be named before the Baron, it shall abate, albeit that be nothing but want of forme, &c. Feme not fore the H

8 Exceptio

Exception muſt come laſt

8 Exceptio ſemper ultimis ponenda eſt. And therefore if a releaſe run thus: A. doth acknowledge himſelf ſatisfied, &c. of all Bonds, &c. made by B. and it is agreed that A ſhall deliver all ſuch Bonds as he hath un-delivered to B. except a bond of 40l. wherein B. & C. ſtand bound, &c. Here the exception extends to all the premiſſes, and it could not be inſerted ſooner, becauſe the proper place thereof is to come laſt, &c. Co. l. 9. 53. a. 2 in *Hickmots* Caſe

Reſervation after the Eſtates.

9 The proper place of a reſervation is to come after the limitation of all the Eſtates; and therefore if A leſt to B Habendum pro uno anno, &c. & ſi in fine anni both parties ſhall be agreed, that the Demiſe ſhall be renued or continued for a longer time, tunc habend. premiſſa for three years, rendering yearly durante termino prædicto 40 l. &c. In this caſe the Reſervation ſhall extend as well to the firſt year, as to the other three years; becauſe the reſervation was to be inſerted after all the Eſtates: ſo likewiſe if a man by deed indented demiſe lands to A, Habendum to him for life, the remainder to B, and to the heirs of his body; and for default of ſuch iſſue to remain to C, in tail or for life, Reddendo inde to the leſſor and his heirs an annual rent, this reſervation ſhall extend not to the laſt eſtate onely, but to the two former eſtates alſo: becauſe it could not be conveniently inſerted, before all the eſtates were limited; for his proper place is to ſucceed them, &c. Co. l. 10. 107. a. 1. in *Loſields* Caſe.

The method obſerved in writs.

10 There is an order obſerved in the Regiſter, when a man demands divers parcels of Land in his writ, which are of divers natures, which parcel ſhall be firſt ſpecified in the writ, and which next to that, and ſo of the reſt: for which order take theſe two verſes following for your direction. F. N. B. 2. a.

uagium, um, endinum, umbare, dinum, ra, tum, tura, cus, ra
Meſ. Toſt. Mol. Col. Gar. Ter. Pra. Pal. Boſ. Brue. mora
ria, cus, tum, caria, ditus
Junca. Mariſ. Alve. Piſ. Red. ſectare priora.

And if a man in his writ will demand ten meſſuages, and ten acres of land, and ten acres of meadow, and ten of paſture, &c. and after in his writ will demand the moity or third part of a meſſuage, or of an Acre of land, or of meadow, or of paſture, &c. then the form of the writ is firſt to ſet down the whole, and afterwards the moity or third part, &c.

Preſentation by turn.

11 If two ſiſters have an advowſon, which happens to be void, the elder ſiſter ſhall have the firſt preſentment, and ſo ſhall the baron of the elder ſiſter, if he be tenant by the curteſie, and the tenant in dower (in that caſe) ſhall have but the third preſentment, &c. F. N. B. 33. m. & 34 v.

74 *Sicut natura non facit ſaltum, Ita nec Lex.*

Order in writs

1 In writs of Entry ſur diſſeiſin, if the degrees be not duly obſerved, and the writ framed accordingly, that errour will make it abatable: As if a man bring a writ of Entry ſur diſſeiſin in the Per, or in the Per y cui, or in the Poſt, when it ought to be a writ of Entry ſur diſſeiſin in the nature of an Aſſize, that is, an error whereupon the writ ſhall abate, &c. Co. Inſt. p. 1. 238. b. 3.

Collations, &c.

2 When a Quare impedit is brought againſt the diſturber and the Biſhop, & ſix moneths paſſe, in that caſe the Biſhop ſhall not collate by laps, neither yet if other ſix moneths paſſe, ſhall the Metropolitan collate; for the Metropolitan ſhall never preſent by laps, but when the inferiour Ordinary might before have collation by laps, and both increaſe his time; ſo that, in this caſe the firſt degree being wanting, the other that follow, ſhall fail, &c. Co. l. 6. 52. a. 1 in *Boſwells* caſe.

Wardſhip.

3 If the tenant make a feoffment by collution, &c. the Lord ought to Co. l. 9. 129. b. 4. in *Quicks* ca.

recover the land by writ of right of ward before he can have a writ for the ravishment of the ward, &c. H.N.B. 143. k. 12. H. 4. 23. b. 53. H. 6. 16. per Priset.

Co. l. 10. 44. b. 4 in *Jennings* case.

4 If the reversioner in fee, and the tenant of a mean estate for life, do both at one and the same time pray to be received, the mean estate for life in respect of the immediatenesse and proximity thereof shall be preferred before the reversion in fee, for the words of the Statute of West. 2. cap. 3. (which gives that receipt) being general, viz. admittantur hæredes vel illi, ad quos spectat reversio, &c. the Law, which always respects order of proximity, prefers the next (though little) estate, be it in remainder or reversion for life, before the more remote (though great) estate in fee, &c. And with this accords 24. E. 3. 32. in Pierce Grimsteads case. — Proximity of Estates respected.

Co. l. 11. 99. a. 4. in *James Baggs* case.

5 If a Major and Aldermen of a Town corporate, which have power by Charter or prescription to dis-infranchise, do dis-infranchise one of their members, and upon motion in the Kings Bench the Judges there do award a writ unto them to restore him, or otherwise to signifie the cause, &c. and they certifie sufficient cause to remove him, but it is false: In this case, the Court cannot thereupon award another writ to restore him, neither yet can any issue be taken thereupon; because the parties are strangers, and have no day in Court: Howbeit the party grieved may well have an Action upon the special matter against those that make the certificate, and aver that it is false: And if it be found for him, and he obtain judgment against them, so that it may appear to the Justices, that the causes of the return are false, then shall they award a writ of restitution, and not before: and this is proved by the reason of the Book in 9. H. 6. fol. 44. where it is holden, that upon a Corpus cum causa, if the cause returned be sufficient, but indeed false, the Court ought to remand the prisoner, and he is thereby put to no mischief; for if they had no authority to imprison him, or that the cause certified be false, he may have a Writ of false Imprisonment against them, &c. Vide Fitz. Tit. corpus cum causa, p. 2. the case of 9. H. 6. well abridged. — Upon a false return the Court cannot proceed.

F. N. B. 19. i.

6 In a Writ of false Judgment upon a Writ of right patent, &c. or a Writ of right close the plaintiffe shall not assign his errors, before all the Records be certified, viz. not only the original, but likewise all the returns of the Records. — No errour before all certified.

F. N. B. 20 c. & 22 f.

7 In a Writ of Error, when the Record is removed, the Plaintiffe shall assign his Errors before he shall have a Scire facias against the Defendant ad audiendum errores, &c. Howbeit he shall have a Scire facias before the Record shall be entred: for it shall not be entred before the parties have day by the Scire facias, &c. — When errours are to be assigned.

F. N. B. 38 o.

8 Upon a Quare Impedit, if the Sheriff return tarde, and the Defendant appears, and the Plaintiff is demanded, and comes not in; in this case the Defendant shall not have a Writ to the Bishop, &c. because no Writ was served against him: for he ought to have the Writ served against him, before he can have that priviledge, &c. — Upon a false return no writ to the Bishop.

F. N. B. 39 c.

9 When a man sues a Quare Impedit against another; and after hanging the suit, he sues a ne admittas to the Bishop, &c. and after they accord in the Co. Pl. to present by turn to that advowson: in this case a special Writ shall issue out of the Chancery to the Bishop to admit the Clerk of him, who ought by that accordant composition to present to the first turne; but first the King ought to send a Certiorare to the Justices of the Com. Pl. to certifie him in his Chancery of the accord there, and upon that Certificate the King shall send his Writ to the Bishop, as aforesaid, &c. — A Certificate of an accord before a *Ne admittas*.

10 In

Writ *de ſecunda ſuper oneratione.*

10 In a Writ de admenſuratione paſturæ, all the Commoners ſhall be admeaſured, viz. as well thoſe that were not parties to the writ, as thoſe that were: but yet if any of them which were not parties, &c. ſurcharge the Common after admeaſurement, they ſhall not forfeit their cattel, (nor yet the value of them) which were in the paſture above the due number, becauſe they were not parties to the firſt writ; neither ſhall the party that complains recover dammages againſt them in that writ for ſuch ſurcharge: for a writ de ſecunda ſuper oneratione lieth not, ſave onely againſt him, againſt whom the firſt Writ was ſued, &c. F.N.B. 126. I.

Matter of fact firſt to be found, and then that in Law to be reſolved.

11 In an Aſſiſe of Freſh-force in London againſt Jekef Foxley and Agnes his wife, and eleven others, whereof ten appeared by Bailiff, and plead, No ſuch Agnes, the wife of Foxley in rerum natura, and demand judgment of the plaint, & quod inquiratur per Aſſiſam, & ſi, &c. Nul. tort. nul. diſſ. &c. and the others plead the ſame plea by Attorney: And the Plaintiffes, as to the plea in abatement of the Plaint demur in law, and as to the other plea they pray the Aſſiſe: And whether the writ ſhould abate or not, was argued at Guild-hall by the Counſel of both parts before the Aſſiſe was taken: but afterwards the Counſel of the Plaintiffs perceiving that the matter was argued before the time, (for the Aſſiſe ought firſt to have inquired all the matter, and if they had found the exception, and had alſo found a diſſeiſor and tenant, then would it have been time to have diſputed what the Law would have determined in that caſe, and not before) they therefore prayed the Court when the Aſſiſe was ſworn, that they might firſt inquire of the matter pleaded in abatement of the Plaint, which was done accordingly, &c. for the courſe formerly run, was prepoſterous, and not ſuitable to ſuch orderly proceeding, as the Law requires: And ſo it was found, that there was no ſuch Agnes, &c. and yet the writ did not abate for the reſt, &c. Pl. Co. 91. a. 1. in the Caſe of the Freſh-force in *London* againſt *Foxley* and others.

75 *A digniori fieri debet Denominatio & Reſolutio.*

A Quod ei deforceat for remnant in Dower and by the Courteſie.

1 It hath been a queſtion in our Books, whether upon a Recovery had by default, in an Action of Waſt againſt tenant in dower, or by the Courteſie, a Quod ei deforceat, lyeth by the Statute of Weſt. 1. cap. 4. For ſome have holden, that in an Action of Waſte, although it be brought againſt a tenant in Dower, or by the Courteſie, that have a Free-hold; yet the damages are the principal, becauſe they were recoverable againſt the tenant in Dower, and by the Courteſie, by the common Law; and the Statute of Glocester gave the place waſted but for a penalty; ſo as the nature of the Action (ſay they) remaineth ſtill to be perſonal; for that the dammages are the principal, &c. But the beſt opinion is conceived to be, that albeit in that Action the dammages may be the more ancient recompence, yet (doubtleſſe) the place waſted (being in the realty) muſt needs be the more principal: And therefore upon a Recovery had by default in an Action of Waſte againſt tenant in Dower, or by the Courteſie, a Quod ei deforceat, lieth, as well as in any other Action, &c. for à digniori fieri debet denominatio & reſolutio, &c. Co. Inſt. p. 1. 353. a. 4.

The Kings Tennis-playes

2 If the King grant the office of the Tennis-Playes in Weſtminſter, by the name of the Kings Tennis-playes in VVeſtm. &c. this grant ſhall be taken in a reaſonable ſence, viz. the Tennis-playes for the Kings Houſhold, and not onely for the Tennis-play, when the King himſelf playes in his Royal Perſon; for the King is the Head of his Houſhold, and therefore à digniori parte the Tennis-playes for his houſhold may be well called, The Kings Tennis-plays, &c. Co. l. 8. 45. b. 4. in *John webs* Caſe.

Co.l.10.47.b. 2. in *Lampets* caſe.

3 A. Leſſée for 500 years deviſeth to B. for his life, and after his deceaſe, the remainder to C, and to the heires of his body, and makes B. his executor, and dies, B. takes upon him the charge and enters; In this Caſe, when the deviſe is ut ſuprà to the executor for life, and after to another, &c. and the executor enters generally, he ſhall have the Leaſe as executor, which is his firſt and general authority, and not as Legatory, without claim or demonſtration of his election; albeit the teſtatar was not indebted to any, &c. Executor or Legatee. Election.

Co.l.11.38.b. 4. in *Metcalfes* caſe.

4 When a thing (whereof there are divers degrées and qualities) is indefinitely mentioned in a Writ, Count, or other Record, the principal and moſt worthy thing ſhall be intended; as in 6. Eliz. Dier.236. when a penalty is inflicted by Act of Parliament to be recovered in any of the Kings Courts of Record, it ſhall be intended of the Principal Courts at Weſtm.30.H.6.33. In account, ſuppoſing the Defendant to be his Receiver from the feaſt of St. Michael, this ſhall be intended the principal Feaſt of St. Michael the Archangel, and not of St. Michael de monte Tumbe, ſo 17.H.4.4.21.H.6.8. & 37.H.6.29. If the father and ſon are of one name, viz. I.S. if I.S. be named generally in a Writ, Count, or other Record, this ſhall be intended of the father, for he is the more worthy: Likewiſe, 10.E.4.11.7.R.2. Tit. Barr.241. A man is bound to proove a thing, or a thing is to be tried; this ſhall be by the moſt principal moſt and trial in law, viz. by a Jury; ſo if it be ſpoken of fée, it ſhall be intended fée-ſimple; or if of eſcuage, it ſhall be intended of the principal Eſcuage, viz. of Eſcuage uncertain, Litt.fol.21. And ſée a notable caſe to this purpoſe in 5 E. 2. Reſceit 165. where the Caſe was this: In admeaſurement of Paſture againſt a man and his wife, Judgment was given, that the admeaſurement ſhould be made, and after it was made in pais, and returned in Banco 15. Hillar. at which day the Baron made default, and the Feme came in Court before the judgment rendred in the principal, and prayed to be received: In this caſe, albeit it was moved, that ſhe came too late, viz. after the admeaſurement awarded, which is a judgment: yet thereunto Herle ſaid, that it was no judgment upon the principal: And where the Statute of Weſt. cap.3. is; Si uxor ante judicium venerit, &c. Statutum debet intelligi de principali judicio. So alſo in 22 E.3.Reſceit 139. In an Aſſiſe of Mortd. againſt Baron and Feme, the Aſſiſe was awarded by default, and the Aſſiſe remained alwayes pro defectu Juratorum, & then the Feme prayed to be received; and it was objected, that judgment was given, that the Aſſiſe ſhould be taken: nevertheleſſe the Feme comming in before final judgment, was received; and with this accords 17. E. 2. ibid.173. and 22. Aſſ. pl. 22. After the Aſſiſe awarded, the Feme was received, 24.E.3.29. and divers other Books accord, &c. Principal things include inferiour.

Litt.§.193. & Co.Inſt.part.1 124. b. 3.

Co.l.11.39.a. 4.in *Metcalfes* caſe.

5 Theſe words in a writ of Error, Si judicium inde redditum ſit, &c. are intended not onely de principali Judicio, but alſo de integro Judicio, viz. when all the matter within the original is determined. as in 34. H. 6.18. in Humphrey Bohuns Caſe in Quare impedit brought by two; the one pleads to the Iſſue, and the other confeſſeth the Action, upon which confeſſion Judgment is given; and he, againſt whom the Judgment was given, ſues a writ of Error to remove the Record into the Kings Bench: Here Priſot & tota Curia ſay, this cannot be; for the writ of Error ſhall rehearſe all thoſe, that are parties to the original writ, and then the writ ſaith, Et ſi Judicium inde redditum ſit, tunc recordum illud habeatis, &c. which proves that it cannot be removed, before the whole matter be determined, &c. No writ of Error, before judgment of all.

The

76 The Law requireth decencie and order.

Homager seek his

1 The tenant ought to ſeek the Lord to do him homage, if the Lord be within England; for this ſervice is perſonal, as well on the Lords ſide, as on the tenants; and in this Caſe the Law requireth decency and order; And therefore Bracton ſaith, Et ſciendum, quod ille, qui homagium ſuum facere debet, obtentu reverentiæ, quam debet domino ſuo, audire debet dominum ſuum ubicunque inventus fuerit in regno, vel alibi, ſi commodè poſſit adiri, & non tenetur dominus quærere ſuum tenentem, & ſic debet homagium ei facere, &c. and there is the ſame Law for fealty, &c. Co. Inſt. pars 1 104. b. 4. Brac. fol. 80. Britton. fo. 171

ſe Matrimonii prælocuti

2 If a woman give lands to a man and his heirs, cauſa matrimonii prælocuti: In this Caſe, if ſhe either marry the man, or the man refuſe to marry her, ſhe ſhall have the land again to her and to her heirs; but on the other ſide, if a man give land to a woman and to her heirs, cauſa matrimonii prælocuti, though he marry her, or the woman refuſe, he ſhall not have the lands again; for it ſtands not with the modeſty of women in this kinde to aſk advice of learned Councel, as the man may and ought, &c. And for the ſame reaſon a woman may aver the cauſe, although it be not contained in the Deed, yea albeit the ſeofment be made without Deed. Co. ibid. 204. a. 3. & 226. a. 3.

in plea-

3 The order of good pleading muſt be obſerved, which being inverted, great prejudice may grow to the party, tending to the ſubverſion of Law: Ordine placitandi ſervato, ſervatur & jus, &c. And therefore firſt, in good order of Pleading, a man muſt plead to the juriſdiction of the Court: Secondly, to the perſon, and therein firſt to the perſon of the Plaintiffe, and then to the perſon of the Defendant: Thirdly, to the Court: Fourthly, to the Writ: Fifthly, to the Action, &c. which order and form of Pleading you ſhall read in the ancient Authors, agreeable to the Law at this day: and if the Defendant miſorder any of theſe he loſeth the benefit of the former: Again, the Count muſt be agreeable, and conform to the Writ, the Bar to the Count, &c. and the Judgment to the Count; for none of them muſt be narrower or broader then the other, &c. Co. Inſt. part 1. 303. a. 2.

ury gi- to the without nd.

4 If the King make a Leaſe for years, reſerving Rent, with condition to be void upon non-payment of the Rent, the King ſhall take advantage of that condition without any demand: For ſo long as the Reverſion and Rent continue in the King, the Law diſpenſeth with the demand, as a thing un-decent, it being againſt the dignity of the King to wait upon his ſubject, or to demand any thing of him: It is otherwiſe, if the King grant over the Reverſion; for his grantee ſhall not take advantage of the Condition, without demand of the Rent: But in the other Caſe the Law (which alwayes requireth that decorum and conveniencie be obſerved) appoints the ſubject to attend upon his Soveraign, and in that Caſe to perform the firſt Act, although it be in the caſe of a Condition, which trencheth to the deſtruction of his Eſtate: Howbeit this is onely a perſonal Prerogative annexed to the perſon of the King for honor and decencies ſake, and not in reſpect of the nature and quality of the Rent, &c. Co. l. 4. 73. a. 3. in Burroughs Caſe.

mand value of

5 One of the reaſons which the Lord Cook addes in the Lord Darcies Caſe, why the ſingle value of the marriage of a Ward in Knight-ſervice ſhould be due to the Lord without demand, is this; If the Common Law (ſaith he) would have inforced the Lord to have made tender to his ward, &c. it would alſo have appointed all neceſſary circumſtances for the performance of ſuch a tender, as a certain place, &c. where Co. lib. 6, 71. b. 2. in the Lord Darcies Caſe.

it

it ſhould be done, and would not have left the Lord, which is the ſuperiour, to finde out the Ward which is the inferiour; and who may, if he will, take advantage of his own ſhifts, when there can be no laches at all in the Lord, &c.

Co. l. 10. 73. b. 2. in the Caſe of the *Marſhalſie*.

6 Amongſt other reaſons produced to prove, that in Suits proſecuted in the Marſhalſie, one of the parties (at leaſt) ought to be of the Kings houſhold; this is one, becauſe (ſaith the Book) it would not be comely, that a Car-man or other Mechanical perſon ſhould at his pleaſure ſue another in that Court, and upon that occaſion take liberty to appear in Aula Regis, (where that Court was originally kept) abſque veſtimentis aulicis; for thoſe that appear in Court uſe to wear garments ſuttable to that place: And therefore it is recorded by Luke the Evangeliſt, cap. 7. verſ. 25. Cœpit de Johanne dicere ad turbam, &c. Quid exiſtis viſuri, hominem mollibus veſtibus amictum? Ecce qui veſtitu magnifico utuntur, &c. ſunt in Palatiis Regis, &c. And the Common Law regards conveniency, and altogether diſallowes indecorum, and every thing done contra bonos mores.

None but the houſh ſhall ſue i the Marſha

77 *Negatio Concluſionis eſt error in Lege.*

Co. l. 10. a. 4. in *Priddle* and *Nappers* Caſe.

1 In Attachment upon a Prohibition, the Plaintiffe counts againſt A. proprietary of Tithes, that heretofore the Prior of Montecute was ſeiſed of twenty Acres of Land, &c. before and at the time of the diſſolution, and held thoſe Acres; and alſo the Rectory ſimul & ſemel, &c. Ratione cujus the Prior held the ſaid Lands diſcharged of Tithes: The Defendant conveys title to the Land, &c. Abſque hoc, that the Prior held them diſcharged of Tithes, &c. Here the plea of the Defendant pro conſultatione habenda (for he is in a manner, an Actor) was inſufficient, becauſe he traverſeth a thing not traverſable: For the preſcription of the unity ought to have been traverſed, and not the Concluſion, viz. Ratione cujus; becauſe as in Logick the concluſion of a Syllogiſme cannot be denied, but either the major or minor Propoſition; ſo neither in Law, which is the perfection of Reaſon, &c.

Lands in th Priors ha not tithe

Co. ibid.

2 In a Præcipe, one that pleads that the Manor of Dale is ancient Demeſne, and that the Land in demand is parcel of the Manor, and ſo ancient Demeſne, there the Demandant cannot ſay, that the Land in demand is not ancient Demeſne; becauſe that is the Concluſion upon the two firſt preceding Propoſitions, viz. 1. That the Manor is ancient Demeſne. 2. That the Land in demand is parcel of the Manor; for ſequitur concluſio ex præmiſſis; and therefore it cannot be denied, and with this agrees 41. E. 3. 22. 48. E. 3. 11. and many other Books.

Ancient D meſne,

78 The Law reſpecteth the Bonds of Nature.

Co. Inſt. p. 1. 78. a. 2.

Co. l. 6. 76. a. 3. in Sir *George Curſors* Caſe.

1 If before the Statutes of 32 & 34 H. 8. the father had infeoffed any of his younger ſons, or others for the making of his wife a Joynture, or for the advancement of his daughters, or for the payment of his debts, and after had enfeoffed and conveyed the Land to his heir, and had died, his heir within age, his heir ſhould not have been in ward, neither was it Colluſion upon the Statute of Marlbr. cap. 6, &c. becauſe he was bound by the law of Nature and Nations to provide for them; but now by force of thoſe Statutes he ſhall be in ward for his body, and for a third part of the Land, &c.

Wardſhi

wardship the father's life.

2 A. hath iſſue B. a daughter, and his heir apparent, who being married to C. hath iſſue by him D. a ſon; B dies, and A. that holds Land by Knights-ſervice, dieth ſeiſed, and the Land deſcends to D. as heir unto A. and within age: In this Caſe, the Lord ſhall have the wardſhip of the Land, but not the wardſhip of the body of the heir; for none ſhall be in ward for his body to any Lord, during the fathers life; becauſe the Law of Nature requires, that the father during his life ſhall have the marriage of his heir apparent, rather than the Lord, or any other perſon whatſoever. The Law is the ſame, if D. had been a daughter: It is otherwiſe, where the father dies, living the mother, when the Land holden by Knights-ſervice, deſcends to the ſon on the part of the father: becauſe the Law in that Caſe confides more in the father than in the mother, &c. Again, this privilege extends not to any collateral heir, but only to the ſon or daughter being heir apparent: for albeit a man ſhall have an Action of Mordauncel, Quare conſanguineum & hæredem capit; and albeit the words be cujus maritagium ad ipſum pertinet; becauſe the well-beſtowing of his heir apparent in marriage is a great eſtabliſhment of his houſe; yet that is to be underſtood as againſt a wrong-doer; but not againſt a Guardian in Chivalry, and the mother ſhall have the like writ for taking away of her ſon and heir apparent; and yet the mother ſhall not bar the Lord by Knight-ſervice of his wardſhip of his body, as Littleton ſaith, § 114. Qui ex filia tua naſcitur, in poteſtate tua non eſt, ſed patris ſui, Fleta l. 5. cap. 6. Litt. § 114. Co. Inſt. ibid. a. 3, &c.

like. 3 Put the caſe there be Lord and Feme-tenant by Knights-ſervice of a Carve of Land, the Feme maketh a ſeoffment in fee upon condition, and taketh the Lord to husband, and have iſſue a ſon; the wife dieth, the iſſue entreth for the condition broken, the Lord entreth into the Land as Guardian by Knights-ſervice, and maketh his executors, and dieth: In this Caſe, the executors ſhall have the wardſhip of the Land during the minority of the heir, but not the wardſhip of the body: For albeit the Lord ſeemeth to have a double intereſt in the wardſhip of the body, one as Lord, and another as father; yet as father, and not as Lord, in judgment of Law, he ſhall have the wardſhip of the body of his ſon and heir apparent, in reſpect of nature, which was before any wardſhip, in reſpect of Seigniories by Knights-ſervice, began; And that wardſhip, by reaſon of nature, cannot be barred, and claim ceaſe in reſpect of the Seigniorie: And the executors of the father ſhall not have ſuch a wardſhip, which the teſtator had as father, neither can ſuch a wardſhip be forfeited by Outlawrie; becauſe it is due to the father in reſpect of priority of nature. 9. Co. ib. 84. b. 2. 33 H. 6. 55 6.

lenge to ray and 4 If the Sheriff or other Officer be of kindred or affinity to the Plaintiffe or Defendant, and that ſuch affinity continue; this is a cauſe of challenge to the Array; as if the Sheriffe marry the daughter of either party, or è converſo, this is a principal challenge; ſo if there be affinity between the ſon of the Sheriffe and the daughter of either party, or è converſo, or the like; albeit this is no principal Challenge, yet is it a Challenge to the favour, &c. Co. ibid. 156. a 2. and 4.

Polles. 5 If a Juror be of blood or kindred to either party, (Conſanguineus, which is compounded of con and ſanguine, quaſi eodem ſanguine natus) this is a principal Challenge to the Polles, becauſe the Law preſumeth that one kinſman doth favour another before a Stranger; and how remote ſo ever he is of kindred, yet the Challenge is good; And if the Plaintiffe challenge a Juror for kindred to the Defendant, it is no Counter-plea to ſay, that he is of kindred alſo to the Plaintiffe, though he be ſo in a nearer degree; for the words of the venire facias forbiddeth the Juror to be of kindred to either party. Co. ib. 157. a. 3

6 If

Co. ibid. 6 If a Body politique or incorporate (ſole or aggregate of many) bring an Action that concerns their Body politique or incorporate, if the Juror be of kindred to any that is of that body (albeit the Body politique or incorporate can have no kindred) yet for that thoſe Bodies conſiſt of natural perſons, it is a principal Challenge, &c. The like.

Co. ibid. 4. 7 Affinity or affiance by marriage is a principal Challenge, and equivalent to Conſanguinity, when it is between either of the parties; as if the Plaintiffe or Defendant marry the daughter or Couzen of the Juror, or the Juror marry the daughter or Couzen of the Plaintiff or Defendant; and the ſame continues, or iſſue be had: And if the ſon of the Juror hath married the daughter of the Plaintiff, &c. albeit this be no principal Challenge, becauſe it is not between the parties, yet is it a Challenge to the favour, &c. The like to the fa

Co. l. 3. 38. b. 4. in *Ratcliffes* Caſe. 8 Martha Wilcocks, (one of the daughters and co-heirs apparent of Eliz. the relict of William Wilcocks, and then the wife of Ralph Ratcliffe) dwelling in her mothers houſe at Hitchin, (being then under the age of ſixteen years, and about fourteen, went from thence at two of the clock in the morning (with the conſent of the ſaid Ralph) to Bramfield, (being eight miles diſtant from Hitchin) and there married Edw. Ratcliffe: And in an Ejectione firmæ brought by Luke Norton upon the demiſe of the ſaid Edw. the iſſue was, whether Eliz. the mother had the cuſtody of Martha at the time of the ſaid marriage; for if ſhe had, then the Land of the ſaid Martha, (being in ſoccage) was to be loſt for her life, by force of the Statute of 4 & 5. P. & M. cap. 8. which prohibiteth the conveying of a maid, &c. out of the cuſtody, and contracting Patrimony with her, without the conſent of her father, if he be living; or of her mother, in caſe her father be dead, &c. in pain for the man to ſuffer impriſonment, &c. and for the maid to loſe her land, as aforeſaid, &c. And in that Caſe it was reſolved, that Eliz. the mother had the cuſtody of the ſaid Martha at the time of the Marriage, within the proviſion of the ſaid Act; for that Statute hath ordained two manner of new cuſtodies, viz. by reaſon of nature, and by aſſignation; And here the father of Martha being dead, ſhe is by nature left in the cuſtody of her mother; neither yet was the aſſent of Ralph Ratcliff (the husband) any thing at all material: for the Statute hath annexed the cuſtody to the perſon of the mother, jure naturæ, which is inſeparable, and cannot by the marriage be transferred to the Baron, but after the marriage remains onely in the mother, &c. A maid c veyed aw and mar

Co. l. 3. 39. a. 4. in *Ratcliffes* Caſe. 9 It is ſaid, that if there be Lord and Feme tenant by Knights-ſervice; and the tenant make a leaſe for life, and after the Lord and the tenant inter-marry, and have iſſue between them a ſon, and the Feme dies, and after the father dies, the ſon within age, here the executors ſhall not have the wardſhip, by reaſon of the Seigniory; for the father hath the wardſhip of his eldeſt ſon jure naturæ, which is inſeparable, and cannot be waved, and he cannot have the wardſhip of his ſon by the death of his wife, in reſpect of his Seigniory; for that was inſeparably veſted in him as father, immediatly upon the birth of the ſon jure naturæ: And Littleton ſaith, that the father during his life ſhall have the marriage of his ſon and heir apparent, and not the Lord, &c. 3. No ward during th thers life

Co. l. 6. 22. *Ambroſia Gorges* Caſe. 10 Viſcount Bindon being ſeiſed of land in capite, had iſſue, Douglas his daughter and heir, who being married to Sir Arthur Gorge, had iſſue by him Ambroſia a daughter, Douglas dies, and likewiſe Viſcount Bindon, Ambroſia being under age, afterwards Sir Arthur Gorge takes another wife, and hath iſſue a ſon, Ambroſia remaining ſtill under age. In this caſe, Ambroſia was not in ward, during the time ſhe remained heir apparent to her father; but after her father had a ſon, ſo that ſhe re- The like

remained no longer heire apparent; then had Queen Eliz. the Wardſhip both of her body and Lands, &c.

Ligiance is by nature.

11 Faith, obedience and ligeance are one to the Soveraigne by the Law of Nature, which cannot be changed or taken away; for albeit Judiciall and Municipall Lawes have inflicted and impoſed in ſeverall places and at ſeveral times divers and ſeveral puniſhments and penalties for breach or not obſervance of the Law of Nature (for that Law onely conſiſting in commanding or prohibiting without any certaine puniſhment or penaltie) yet the very Law of Nature it ſelf could never be altered or changed: And therefore it is certainly true, that Jura naturalia ſunt immutabilia. And here with agreeth Bracton lib. 1. cap. 5. and Doct. and Student cap. 5. & 6. For example, If a man hath a Ward by reaſon of a Seigniory, and is out-lawed, he forfeiteth the wardſhip to the King; but if a man hath the wardſhip of his owne Sonne or Daughter, which is his heire apparent, and then is out-lawed, he cannot forfeit that wardſhip; becauſe nature hath annexed it to the perſon of the Father, as it appeareth in 33 H. 6. 55. b. So likewiſe the Faith, Obedience, and Ligeance, which we owe to our Soveraigne cannot be taken away; For, bonus Rex nihil a bono patre differt, & patria dicitur à patre, quia habet communem patrem, qui eſt pater patriæ. In the ſame manner, Maris & fœminæ conjunctio eſt de jure naturæ, as Bracton and Doct. & Stud. in the places before quoted do hold: And therefore if he that is attainted of treaſon or felonie be ſlaine by one, that hath no authoritie, or executed by one, that hath authoritie, but purſueth not his Warrant; In this Caſe, the eldeſt ſonne can have no appeale; for he muſt bring his appeale as heire, which privilege, being ex proviſione hominis, he loſeth by the attainder of his Father: Howbeit his Wife (if he have any) ſhall have an appeale; becauſe ſhe is to have her appeale as Wife, which ſhe continueth to be, notwithſtanding the attainder; for that maris & fœminæ conjunctio is de jure naturæ; And therefore (it being intended to be of true and law-full matrimonie) is indiſſoluble: and this is proved by the booke in 35 H. 6. fol. 57. So if there be Mother and Daughter and the Daughter is attainted of felonie, now can not ſhe be heire to her Mother, for the cauſe afore-ſaid: yet after her attainder if ſhe kill her Mother, this is parricide and petite treaſon: For ſtill ſhe remaineth her Daughter: becauſe that is of nature. If a man be attainted of felonie or treaſon, he hath loſt the Kings Legal protection: for he is thereby utterly diſabled to ſue any Action reall or perſonal (which is a greater diſability then an alien in league hath) and yet ſuch a Perſon ſo attainted hath not loſt that protection, which by the Law of Nature is given to the King: for that is indelebilis & immutabilis, and therefore the King may protect and pardon him; and if any man kill him without warrant (albeit attainted as afore-ſaid) he ſhall be puniſhed by Law as a Man-ſlayer: By the Statute of the 25 E. 3. cap. 22. a man attainted in a Præmunire, is by expreſſe words out of the Kings protection generally; and yet this extendeth onely to legal protection, as it appeareth by Litt. fol. 43. for the Parliament could not take away that protection, which the Law of Nature giveth unto him; and therefore notwithſtanding that Statute the King may protect and pardon him: And although by that Statute it was farther enacted, that it ſhould be done with him as with an enemie, by which words any man might have ſlaine ſuch a perſon (as it is holden in 24 H. 8. Coron. Br. 197.) until the Statute made in 5 E. cap. 1. Yet the King might protect and pardon him. A man out-lawed is out of the benefit of the Municipal Law; for ſo ſaith Fitz. N. B. 161. Ut legatus eſt quaſi extra legem poſitus; And Bracton (l. 3. tract. 2. cap. 11.

Co. l. 7. Calvin's Caſe fol. 13. b.

33. H. b. 55. 6.

35 H. 6. 57.

21 E. 3. 17. b.

4 E. 4.
35 H. 6. 57.
2. Aſſ. Pl. 3.

ſaith that caput gerit lupinum, &c. yet is he not out either of his natural ligeance, or of the Kings natural protection; for neither of them is tied to municipal lawes, but is due by the law of Nature, which was long before any judicial or municipal lawes: And therefore if a man were out-lawed for felonie, yet was he within the Kings natural protection: for no man but the Sheriffe could execute him, as it is adjudged in 2. Aſſ. Pl. 3. Every ſubject is by his natural ligeance bound to obey and ſerve his Soveraigne, &c. It is enacted by the Parliament in 23 H. 6. cap. 8. that no man ſhould ſerve the King as Sheriffe of any County above one yeare, and that, notwithſtanding any clauſe of non obſtante to the contrary, that is to ſay, notwithſtanding that the King ſhould expreſſly diſpence with the ſaid Statute; howbeit it is agreed in 2 H. 7. that againſt the expreſſe purview of that Act, the King may by a ſpecial non obſtante diſpence with that Act; for that the Act could not barre the King of the ſervice of his ſubject, which the law of nature did give unto him: One of the chiefeſt grounds, according to which the Caſe of the poſt-nati was reſolved in 6 Jac. was, becauſe obedience and ligeance of the ſubject to the Soveraigne is due by the law of Nature; for if they be due by that law, and the ſame law be parcel of the lawes of England as well, as of all other Nations, and is immutable, and that poſt-nati & we of England are united by birth-right in obedience and ligeance (which is the true cauſe of natural ſubjection) by the law of Nature, It cleerly followed, that Calvin (the Plaintiffe in that cauſe) being borne under one ligeance to one and the ſame King, could not be an alien borne: And there is great reaſon (as it was then alledged) that the law of Nature ſhould direct that Caſe, wherein five naturall operations were remarkable, 1 The King had the Crowne of England by birth-right, being naturally procreated of the bloud Royal of this Realme; Secondly, Calvin the Plaintiffe, was naturalized by procreation and birth-right, ſince the deſcent of the Crowne of England; Thirdly, Ligeance and obedience of the ſubject to the Soveraigne due by the Law of Nature; Fourthly, Protection and government alſo due by the Law of Nature: Fiftly, It was preſently ſaid, that this Caſe of Calvin in the opinion of divers was more doubtfull in the beginning, but the farther it proceeded the cleerer and ſtronger it grew, and therefore that the doubt did ariſe from ſome violent paſſion, and not from any reaſon grounded upon the Law of Nature, quia quantò violentus motus (qui fit contra naturam) appropinquat ad ſuum finem tantò debiliores & tardiores ſunt ejus motus, ſed naturalis motus, quantò magis appropinquat ad ſuum finem, tanto fortiores & velociores ſunt ejus motus: And for as much as in caſe of an alien Borne, you muſt of neceſſitie have two ſeveral ligeances to two ſeveral perſons, but in this Caſe one perſon alone is head of both, and the poſt-nati, and we now joyned in ligeance to that one head, (which was copula, & tanquam oculus of that Caſe) And ligeance of the ſubjects of both Kingdomes being due to their Soveraigne by one and the ſame Law, viz, by the Law of Nature, the poſt-nati cannot be aliens of either Kingdome, but ad invicem naturaliz̃ed ſubjects of both; for, Non adverſatur diverſitas regnorum, ſed regnantium; non patriarum, ſed patrum patriarum; non coronarum, ſed coronatorum: non legum municipalium, ſed Regum Majeſtatum, &c.

Mother guardian.

12 If the Grand-father hath iſſue a Sonne, and the Sonne take Wife and hath iſſue and die, the Mother of the iſſue ſhall have the Wardſhip of the iſſue, which is her owne Sonne, and not the Grand-father: Albeit the iſſue may have the Land, which ought to deſcend unto him from the Grand-father: that the Mother ſhall not have it, &c. F. N. B. 143.

13 The

No champerty to the Sonne.

13 The Statute of Articuli ſup. cartas cap. 11. provides, that no Miniſter, or other whatſoever, to have part of the things, which are in Plea, ſhall undertake buſineſſes, which are ſo in plea; yet if the Tenant hanging a percipe quod reddat againſt him, enfeoffe his Sonne and heire apparent, this ſhall be out of the danger of that Statute, as it is taken in 6 E. 3. 274. in a writ of Champertie (ſee it alſo in Fitz. Champertie 10.) and the reaſon of this is, for that the Sonne cannot be ſaid a Maintainer of the Father; becauſe he is bound to aide and aſſiſt his Father, when and as often as he may, being enjoyned ſo to do by the Law of nature, &c. Pl. Co. 88. b. 3. *Partriges* caſe.

The Son may abet his mother.

14 By the Statute of Weſt. 2. cap. 12. it is ordained, that in an appeale it ſhall be inquired, who were the Abettors, and that they ſhall render damages to the partie acquit; Nevertheleſſe, if the heire abet his Mother to bring the appeale, although it is within the words of that Statute, yet ſhall he be out of the danger of it; And ſo Herle tooke it, in 6 E. 3. 274. For Common Law and reaſon ſay, that he ought to be aiding to his Mother, and may alſo abet her. Pl. Co. ibid.

Conſideration to raiſe uſes.

15 Affection for the proviſion of heires male, that one ſhall engender, Brotherly love, &c. are good conſideration to raiſe an uſe; But long Acquaintance and familiarity, are not: Howbeit conſideration of Mariage is more favoured in Law, then any other. Finch, 25. Co. Inſt. p. 1. 21. b. 1.

Maintenance.

16 The Sonne may maintaine his Father and one Brother another, &c. Finch, ibid.

17 Brothers or Cozins ſhall not wage Battel in a writ of right, &c. Finch, ibid.

The Wife may relieve her Husband.

18 A Statute, that maketh it Felonie to receive or give meat and drink to one that committeth ſuch or ſuch an offence, (the partie ſo receiving or giving having knowledge thereof) ſtretched not to a Woman, that receiveth or giveth meat and drink to her Husband in ſuch a Caſe, &c. Finch, ibid.

Privitie in Blood ſtrongeſt.

19 You ſhall finde three manner of Privities ſpoken of in the Law, viz. Privitie in Blood; Privitie in Eſtate, and Privitie in Law; Privitie in Blood is, that betweene the Anceſtor the Heire, Privitie in Eſtate, as betweene Jointenants, Baron and Feme, Donor and Donee, Leſſor and Leſſee, &c. Privies in Law are, as when the Law without Blood or Privitie of Eſtate caſts the Land upon one, and makes his entry Congeable, as the Lord by eſchaete, the Lord that enters for Mortmaine, Lord of a Villein, &c. Now of theſe three ſorts of privities, oneſy the firſt (which is by blood, and therefore moſt natural) ſhall take advantage of Infancie, Coverture, non ſanæ memoriæ, &c. and not the other two. And therefore if an Infant, Tenant in Fee ſimple, make a Feoffement and die, his Heire ſhall enter. There is the ſame Law alſo of heires ſpecial, and of heires general and ſpecial, unto whom the right of entry deſcends per formam doni, or by the Cuſtome, as all Lands in Gavelkind, Borough-Engliſh, &c. It is otherwiſe of privies in Eſtate, and in Law; And therefore if the Donee in tale within age make feoffment in Fee, and die without iſſue, the Donor ſhall not enter; Becauſe there was oneſy privitie in Eſtate between them, and no right accrued to the Donor by the death of the Donee: So if there be two Jointenants in Fee within age, and the one makes Feoffment in Fee of his mottie; and dies, the ſurvivor cannot enter by reaſon the Infancie of his Companion; Becauſe by his Feoffment the jointenure was ſevered, ſo long as the Feoffment remaines in force; and therefore in ſuch Caſe the Heire of the Feoffor ſhall have a dum fuit infra ætatem, or ſhall enter into the mottie: In like manner Privies in Law (as the Lord by eſcheate, &c.) ſhall Co. l. 8. 42. b. 4. & 44. a. 4. in *whittinghams* Caſe.

never take advantage of the Priviledge of Infancie; because they are Strangers to it: And in that Case if an Infant Tenant make Feoffment and die without Heire, the Feoffment is un-avoidable: here is the same Law of Coverture and non sanæ memoriæ, &c.

Co. l. 6. 76. b. 4. in Sr. Geo. Curſons Caſe.

19 It is ſaid, that one of the Chiefeſt reaſons, that moved the Parliament in 32 H. 8. and in 34 & 35 H. 8. to give libertie to diſpoſe of the two third parts of Lands by will or otherwiſe for a Competent livelyhood of Wifves, and Children, or for payment of Debts, was this; Becauſe theſe Caſes were ordinary, uſual, and neceſſary; And for that every man is in his life time bound by the Law of God, of Nature, and of Nations, to make proviſion for his Wife, and Children, and alſo for the payment of his Debts, &c. 32, & 34, 35 H. 8. of Wils.

Co. ibid: 77. a. 2.

20 There is a neerer Relation betweene Father and Sonne, then betweene Grand-father and Grand-child; And therefore if there be Grand-father, Father, and divers Sonnes, and the Grand-father in the life time of the Father conveys his Land to ſome of the Sonnes, this is out of the Act of 32 H. 8. of Wils; For the Father ought to have the immediate care of his Sonnes and Heires; But if the Father be dead, then the care of them belongs to the Grand-father, and then if he convey any of his Lands to any of them, that is within the ſaid Statute. Father neere then Grand-father.

Co. Inſt. pr. 1. 123. b. 2. Litt. §. 189.

21 It is regularly true, that the Villain cannot bring any Action againſt his Lord, yet he may have againſt his Lord an appeale of the death of his Father, or of any other of his Anceſtors, whoſe heire he is, &c. becauſe the villain is both by duty and in nature bound to purſue ſuch an Action. A Villein may ſue his Lord.

Co. lib. 3. 12. b. 2. Sr. Will. Herberts Caſe.

22 If a man ſeiſed of three Acres of Land, acknowledge by a recognizance or Statute, &c. And enfeoffes A. of one Acre, and B. of another, and the third deſcends to his heire: in this Caſe, if execution be ſued only againſt the heire, he ſhall not have contribution; For he comes in the place of his Anceſtor, and ſits in his State: Hæres enim eſt alter ipſe & filius eſt pars patris, And as it is ſaid, Mortuus eſt pater & quaſi non mortuus, quia reliquit ſimilem ſibi. No contribution to the heire.

Co. Inſt. p 1. 174. a. 4.

23 If one Coparcener maketh a Feoffment in Fee, and after the Feoffee is impleaded and voucheth the Feoffor, the may have ayde of her Copartener to deraygne a Warrantie per amount, but never to recover per rata againſt her by force of the Warrantie in Law upon the partition; For (as Littleton ſaith) by her alienation ſhe hath diſintitled her ſelfe to have any part of the Land as parcener, but if there be two Coparceners and they make partition, and the one of them enfeoffs her Sonne and heire apparent and dieth, and after the Sonne is impleaded; Here, albeit he be in by the Feoffment of his Mother, yet ſhall he pray in ayde of the other Coparcener to have the Warrantie per amount, and to recover per rata, not only becauſe the Warrantie betwixt his Mother and him is by Law annulled, but likewiſe for that he is alter idem with his Mother. The heire apparent ſhall derraigne the warrantie from upon feoffment for the moother.

Dier 2. b. 1. 19 H. 8.

*24 A fine levied by Tenant in taile after the Statute of 4 H. 7. 24. and before the Statute of 32 H. 8. 36. did bind the iſſue in taile, and his title was not preſerved by any of the ſavings in 4 H. 7. becauſe (albeit he claimed per formam doni, yet) claiming through his Father, the Land came to him in the nature of a deſcent. Iſſue in taile barred by fine.

Dier 128. b. 61 2, 3. P. M.

25 If any of the Kings ſubjects be beyond ſea, and is commanded by the King to return home, and in contempt refuſeth ſo to do, all his Goods and Chattels, Lands and Tenements ſhall be ſeiſed to the uſe of the King; And this is by reaſon of the faith and allegiance, which he oweth to the King by the Law of Nature: And this was the Caſe of Richmonds Caſe in 19 E. 2. in Scaccario. Allegiance.

26 If

e like.

26 If a Bastard were borne at Turney, when it was under the obedience of H. 8. he was a denizen by the Law of Nature: So it is also of the issue of Aliens born within this Realme. Dier 224. 19. 5. Eliz.

27 Vide Hob. Rep. pag. 3. The Earle of Clanrichards Case 10. Grisley against Lother

redon.

28 In a cessavit brought by the Husband and Wife, or in a writ of Escheat, a consimili casu, or Action of Waste, because there is a vested in them already either a Signiory or reversion actually, and therefore the Lands holden, or the present Estate to return, is come in possession, therefore in these Cases, Reverter is to be made to them both. and so are the Bookes in 3 H. 6. 2. 20 E. 3. Briefe 372. Register 238. F. N. B. 210. Also in a Formedon in Reverter, wherein nothing is already revested, but the right onely returnes, there the right may be laid to return, either to the Wife alone, or to the Husband and Wife, as Douby resolves it 33 H. 6. 54. See also 18 H. 8. 20. 5 H. 3. 13. 38 E. 3. 16. and 18 E. 3. 3. where it was sometimes to the Wife, sometimes to the Husband and Wife: But in a Formedon in descender upon a descent to the Wife, there the descent must be made in the writ to the Wife alone, because the descent followeth the blood, and to that the Husband is a Stranger, and so are the Bookes in 19 H. 6. 46. and 53 H. 6. 10. where a Formedon in descender was brought by two Husbands and their Wives, and made the descent in blood to the Wives onely, and yet conclused, that the right ought to descend to the Husbands and Wives: And exception was taken to it, and ordered by the Court, that it should be amended, and the descent made onely to the Wives. Hob. 1. The E. of Clanrichards Case.

Assumpsit.

29 In an Action upon an Assumpsit, that A. would give to B. 100l. if B. would give her consent, that A. might marry her Daughter, and it was moved in arrest of judgement, that the action would not lie, the consideration being no travel or charge, but onely a bare consent: howbeit, it was held by three Justices against one, that the consideration was good, because the Mother hath by the Law of Nature a special Eye to incline the Daughters mind either one way or other, and the desire of her consent and the working of it shewes, that the Plaintife so conceives it. Hob. 10. Grisley and Lother.

79 *Nemo præsumitur alienam posteritatem suæ prætulisse.*

Collateral Warrantie.

1 If Tenant in tayle discontinue the taile and hath issue and die, and the Uncle of the issue release to the discontinuee with Warrantie, &c. and die without issue, this is Collateral Warrantie, and shall barre the Issue in taile, albeit the Uncle had no right at all to the land intailed; because the Law presumeth that the Uncle would not unnaturally disinherit his Lawfull Heire, being of his owne blood, of that right, which the same Uncle never had, but came to the Heire by another meane, unlesse he would leave him greater advancement some other way; For nemo præsumitur, &c. And in this Case the Law will admit no proofe, against that which the Law presumeth: And so it is likewise of all other Collateral Warranties; no man is presumed to do any thing against nature. Co. Inst. p. 1. 373. a. 3. Lit. § 705.

Conveyance within the Ast of Wils.

2 If a man make a voluntary Conveyance of his Land to the use of any of his collateral blood, who is not his heire apparent, that is not within the Act of 32 H. 8. of Wills; For it cannot be intended, that he will disinherit his heire on purpose to defeat the King of his Ward (seeing every one hopes to live to see his heire attaine his full age) much lesse to defraud him of his Primer seisin. Vide Dier 307. 71. Co. Lit. 77. a. 3. in Sr. Geo. Cutlers Case.

80 The Law eſteemeth and judgeth of all things according to their nature and quality.

Co. Inſt. p. 1. 91. b. 4.

1 Where the tenant holds of his Lord by fealty and a pound of pepper, or a pound of Cummin, or a certain number of Capons, or hens or a pair of Gloves, or certain buſhels of wheat, or the like; the Lord ſhall have ſo much for relief as he receives in rent, viz. a pound of pepper, a pound of Cummin, or the like: But if the tenant holdeth of the Lord by doing certain work-dayes in Harveſt, or to attend at Chriſtmas, or the like, he ſhall not double the ſame; for of corporal ſervice or labour, or work of the tenant, no relief is due. It being onely payable, where the tenant holdeth by ſuch yearly rents or profits, which may be paid or delivered, &c. Certain ſervices not double for relief.

Co. ib. 92 a. 2. Litt. §. 128, & 129.

2 When the tenant holdeth by ſuch yearly rents or profits, as may be preſently delivered, the relief is due to be paid to the Lord immediately upon the tenants death; and upon non-payment thereof the Lord may diſtrain for it preſently: Howbeit if the tenant holds of his Lord by a Roſe, or by a buſhel of Roſes, to be paid at the Feaſt of St. John Baptiſt, if ſuch a tenant die in winter, the Lord ſhall forbear to diſtrain for the Relief, until the ſeaſon of Roſes; for Lex ſpectat naturæ ordinem, Lex non cogit ad impoſſibilia. And therefore it is obſerved by my Lord Cook, that Littleton puts a diverſity between Corn and Roſes; for Corn will laſt, and therefore the tenant muſt deliver the Corn preſently before the time of growth, and ſo of ſaffron, &c. but Roſes and other flowers that are fructus fugaces cannot be kept, and therefore are not to be delivered, until the time of growing; neither is the tenant driven by law artificially to preſerve Roſes; for the Law in theſe caſes reſpected nature, and the courſe of the year, &c. Not to be diſtrained for preſently.

Co. ib. 121. b. 4 & Co. l. 4. 36. b. 4. in *Tyringhams* caſe. & Pl. Co. 168. *Hill & Granges* Caſe.

3 Preſcription (although never ſo ancient) cannot make any thing appendant or appurtenant, unleſſe the thing appendant or appurtenant agree in quality and nature with the thing whereunto it is ſo appendant or appurtenant; as a thing corporeal cannot properly be appendant to a thing corporeal, nor a thing in-corporeal to a thing incorporeal; but things incorporeal which lie in grant, as Advowſons, Villains, Commons, and the like may be appendant to things corporeal, as to a Manor, houſe, or lands: ſo alſo may things corporeal be appendant to things incorporeal, as Lands to an Office: but yet theſe alſo ought to agree in nature and quality: for Common of Turbary or Eſtovers cannot be appendant or appurtenant to Land, but to an houſe to be ſpent therein; nor a Leet which is temporal to a Church or Chappel, which is Eccleſiaſtical: Neither can a Noble man, Eſquire, &c. claim a ſeat in a Church by preſcription, as appendant or belonging to land, but to an houſe; for that ſuch a ſeat belongeth to the houſe, in reſpect of the Inhabitancy thereof; and therefore if the houſe be part of a Manor, yet in that caſe he may claim the ſeat, as appendant to the houſe for the reaſon aforeſaid. Things properly appendant and appurtenant.

Co. ibid. 129. a. 4.

4 A man cannot be naturalized either with limitation for life, or in tail, or upon condition; for that is againſt the abſoluteneſſe, purity, and inſelebility of natural Allegiance. Naturalization.

Co. ib. 130. a. 4

5 Corporations aggregate of many are not capable of the Profeſſions of Profecturæ or moraturæ; becauſe the Corporation it ſelf is inviſible, and reſteth onely in conſideration of law. Corporation

Co. ib. 144. b. 4

6 Littleton ſaith (§ 219) that the Grantee of a rent charge hath election to bring a writ of annuity, and ſo changing the perſon onely to make Rent-charge

make it perſonal, or elſe to diſtrain upon the land, and ſo to make it real; but this is to be underſtood with ſome limitation; for of a rent granted for owelty of partition, a writ of Annuity doth not lie, becauſe it is of the nature of the land deſcended: Alſo of ſuch a rent as may be granted without deed, a writ of Annuity doth not lie, although it be granted by deed, &c.

tenants

7 If there be two Joynt-tenants, and the one lets his moity to another for life. In this Caſe, the Joynture is ſevered ſo, that if the Joynt-tenant which ſtill retains the frank-rent of his moity, have iſſue and die, the iſſue ſhall have that moity by deſcent; becauſe a frank-tenant cannot by nature of Joynture be annexed to a bare reverſion, &c. Co. ib. 192. b. 3. Litt. §. 302.

ine Ser-
& frank-
oigne.

8. Where the Common or Statute Law giveth remedy in foro ſeculari, (whether the matter be temporal or ſpiritual) the Connuſance of that Cauſe belongs to the Kings temporal Courts onely, unleſſe the Juriſdiction of the Eccleſiaſtical Court be ſaved, &c. as if an Abbot or Prior hold of his Lord by Divine Service certain, and that Service is not performed, the Lord hath his remedy in foro ſeculari, becauſe the Service being certain, proof thereof may be made in a temporal Court: It is otherwiſe of tenure in frank-almoigne; for that Service being ſpiritual and uncertain, muſt be deſined and recovered in foro Eccleſiaſtico, in an Eccleſiaſtical Court, unto which Court the Connuſance of that cauſe doth properly belong, &c. Co. Inſt. p. 1. 96. b. Litt. §. 137.

Tenants in
ommon for
Rent arrear.

9 If two tenants in common of Lands in fee make a gift in tail, or a leaſe for life, reſerving a yearly rent, and a pound of pepper, and an hawk, and an horſe, and they are ſeiſed of that ſervice; and afterwards all the ſaid ſervice being arrear, they diſtrain for it, and the tenant makes reſcous; In this Caſe, as to the rent and pound of pepper they ſhall have two ſeveral Aſſiſes, becauſe the two tenants in common hold the reverſion (unto which that ſervice is incident) by ſeveral titles: but as to the hawk and horſe, albeit they be tenants in common, &c. they ſhall joyn in the Aſſiſe; for one of them above by himſelf cannot make his plaint in Aſſiſe for the moity of an hawk or of an horſe; becauſe the Law will never ſuffer any man to demand any thing againſt the order of nature, or reaſon, as it appeareth by Littleton § 129. Lex enim ſpectat naturæ ordinem, &c. Co. ibid. 197. Litt. §. 314.

ditional
ſtments
bligations.

10 If A. enfeoff B. of Black acre, upon condition that if C. enfeoff B. of White acre, A. ſhall re-enter; In this Caſe, C. hath time during his life to make the feoffment, if B. doth not haſten it by requeſt, and ſo likewiſe of an Obligation: Howbeit in ſome Caſes, although the condition be collateral, as aforeſaid, and is to be performed to the Obligée, and no time limited, &c. yet in reſpect of the nature of the thing, the Obligor ſhall not have time during his life to perform it: As if the condition of an Obligation be, to grant an Annuity or yearly rent to the Obligée during his life, payable yearly at the Feaſt of Eaſter, this Annuity or yearly rent muſt be granted before Eaſter, or elſe the Obligée ſhall not have it at that Feaſt during his life, & ſic de ſimilibus: And ſo it was reſolved by the Judges of the Common Pleas, in Andrews caſe: for which ſee Dier. 14. Eliz. 311. Co. ib. 208, b. 4.

like.

11 If a feoffment or bond be made upon condition, that the Feoffor or Obligor ſhall pay a certain ſum of money to the feoffée or obligée at ſuch a day, but no place limited for the payment thereof; In this caſe, the Feoffor or Obligor ought to ſeek out the feoffée or obligée to make payment thereof accordingly, if he be to be found within England, &c. for in caſe of an Obligation the Law was always clear, and in caſe of a feoffment, although it hath been ſometimes controverted, yet at this day Co. ib. 210. a. 4

that

that doubt is ſetled, it having béen oftentimes reſolved, that ſeeing the money to be paid is a ſum in groſſe and collateral to the title of the land; the feoffor muſt tender the money to the perſon of the feoffée; and it is not ſufficient for him to to tender it upon the land: otherwiſe it is of a rent, that iſſueth out of the land: Howbeit, if the condition of a bond or feoffment be to deliver twenty Quarters of wheat, or twenty loads of timber, or the like, the Obligor or Feoffor is not bound to carry the ſame about, and to ſéek the Feoffée or Obligée; but the Feoffor or Obligor before the day muſt go to the Feoffée or Obligée, and know where he will appoint to receive it, and there it muſt be delivered. And ſo note a diverſity betwéen money and things ponderous, or of great weight: Likewiſe if the Condition of a Bond or Feoffment be to make a Feoffment, there it is ſufficient for him to tender it upon the Land, becauſe the State muſt paſſe by livery, &c.

Co. ibid. 285. b. 3. 12 Every man ſhall plead ſuch pleas as are proper for him, and apt for his defence to be pleaded: As a diſſeiſor that hath nothing in the land may plead a releaſe of Actions perſonal, becauſe damages are to be recovered againſt him, and therefore for his defence he may plead it. But a releaſe of Actions real he cannot plead, becauſe he hath no Eſtate in the land. And none ſhall plead a releaſe of Actions real in an Aſſiſe, but the tenant of the land. Et ſic de cæteris. Pleas of a diſſeiſor.

Co. ibid. 338. a. 3. 13 A particular Eſtate of things that lie in grant cannot commence without déed, and conſequently that Eſtate cannot be ſurrendred without déed; but albeit a particular Eſtate be made of Lands by déed, yet may it be ſurrendred without déed, in reſpect of the thing demiſed; becauſe the particular Eſtate might have béen made without déed: And ſo on the other ſide, if one be tenant by the Courteſie, or tenant in Dower of an Advowſon, Rent, or other thing that lies in grant, albeit there the Eſtate began without déed, yet in reſpect of the nature and quality of the thing that lies in grant, it cannot be ſurrendred without déed: And ſo if a Leaſe for life be made of Lands, the remainder for life, albeit the remainder for life began without déed, yet becauſe Remainders and Reverſions, though they be of lands, are things that be in grant, they cannot be ſurrendred without déed, &c. Things that lie in grant.

Co. ibid. 144. a. 5. 14 A Rent cannot be granted out of a Piſcarie, a Common, an Advowſon, or ſuch like incorporeal Inhabitants, but out of lands or tenements, whereunto the Grantée may have recourſe to diſtrain, or which may be put in view to the Re-cognitors of an Aſſiſe. And although it be out of Lands or tenements, yet it muſt be out of an Eſtate, that paſſeth by the Conveyance, and not out of a right, as if the Diſſeiſée releaſe to the Diſſeiſor of Land, reſerving a rent, the reſervation is void, & ſic de ſimilibus. No rent out of things incorporeal.

Co. l. 4. 43. b. 4. in *Bibithes* Caſe. 15 John Goffe, the brother and heir of R. Goffe, brings an Appeal of murder of the ſaid R. Goffe againſt Bibithe, as principal, and againſt Hoell David, as acceſſarie before, and againſt David & Thomas, as acceſſarie after: The principal pleads not guilty, and by niſi prius in the County of Manmouth he was found guilty of man-ſlaughter and not guilty of murder: and in this Caſe it was reſolved per Popham Chiefe Juſtice & totam Curiam in the Kings Bench, that Hoell David was diſcharged: becauſe there could not be any acceſſory before the fact in Caſe of man-ſlaughter: for man-ſlaughter ought to Inſue upon a ſudvaine debate of affray, becauſe, if it be premeditate, it is murder. No acceſſo before the f in manſla her.

Co. lib. 4. 16. b. 2. in *Forſe & Hemblings* Caſe. 16 A Feme ſole deviſeth land to A. and his heirs; if A. ſurvive him, they inter-marry, the Feme revokes, and often ſaith (during the Coverture) that A. ſhall not have it, and dies, whereupon the heir of the A femes will revoked b taking Ba

the Feme entered: And in this Case it was resolved, that the making of a Will is but the inception of it, and that it taketh not any effect until the death of the Devisor; for Omne testamentum morte consummatum est, & voluntas est ambulatoria usque extremum vitæ exitum: And therefore it would be against the nature of a will to be so absolute, that the party which made it being of sane and perfect memory, might not have power to counter-mand it; and then this taking of Baron being the Femes proper act, shall be accounted a counter-mand in Law, of the will; and thereupon the heir of the Feme recovered the Land, &c.

Payment to a termer, no seisin of rent.

17 A man deviseth a rent for life out of the Manor of Dale, and deviseth the Manor for years, the termor enters, and payes the Rent: after the Term ended, the Devisee brings an Assise against the Tenant: And in this Case it was resolved per totam Curiam, that the payment of the rent by the termor was not seisin to binde the Tenant, after the determination of the Term, in respect of the weakness and meanness of the interest of the tenant for years, who at the common Law could not prejudice nor draw in question the estate of the frank-tenement, &c. Co. lib. 6. 57. a. 4. in *Bredimans* Case.

Common *rationæ commorantiæ* not good.

18 In Trespass, the defendant justifies, that all Inhabitants in any antient Messuage within the Town of Dale have used to have Common in the place, &c. in Solo ratione commorantiæ, And it was adjudged per totam Curiam, that this Custome was against Law for divers reasons, amongst which this was one, that such a claim of a Common is against the nature and quality of a Common; for every Common may be suspended or extinguished; but such a Common as that shall be so incident to the person, that no certain person shall be able to extinguish it: for so soon as he which releaseth, &c. removes, the new Inhabitant shall have it again, 7 I. 3. Co. lib. 6. 60. a. 3. in *Gatewards* Case.

Allegiance not local.

19 In Calvins Case, the plea of the Defendants, that confines the ligeance of the Plaintiffe Calvin to the Kingdome of Scotland onely, (Infra ligeantiam Regis Regni sui Scotiæ, & extra ligeantiam Regis Regni sui Angliæ) and so did make one local ligeance for the naturall subjects of England, and another local ligeance for the naturall subjects of Scotland, was adjudged utterly insufficient: because ligeance being a quality of the mind, that follows the subject whithersoever he goeth, it is against the nature thereof to be local, or confined within any one particular Kingdome or Countrey; And therefore it is truly said, Qui abjurat regnum, amittit regnum, sed non regem; amittit patriam, sed non patrem patriæ; for notwithstanding the abjuration, he oweth the King his ligeance, and still remaineth within the Kings protection; because the King, if he please, may pardon him and restore him to his Countrey again, &c. Co. l. 7. 9. b. 2. *Calvins* case.

Seisin of rent severable.

20 There is a diversity, when the Lord in his Avowrie varies from the truth of the quality of the services, by colour of seisin and possession, which he hath got of his tenant, and when he varies from the truth of the quantity of the services, by reason of seisin, which he hath got of more then he ought to have of the same nature; for where the Lord avowes, because the tenant holds of him certain land by fealty, rent, and suit of Court, and alleges seisin of all, and for the rent arrear, &c. whereas the true tenure was by fealty and rent onely: In this case, the seisin of the suit is not material, because it is of another quality and nature, and the tenancy originally was not charged with any service of such a quality as suit of Court: And therefore in such case the tenure is tresherchable. But where the rent is 2 s. per annum, if the Lord hath happened quiet and voluntary seisin of more rent, then he Co. lib. 9. 33. a. 3. in *Backwells* Case.

ought to have, as of 3 s. &c. (without any coherion of diſtreſs) there, becauſe the tenancy is charged with ſervice of ſuch nature and quality, and ſo that it is not to be preſumed, that the tenant would willingly pay more rent, than he ought, the ſeiſin is traverſable, and not the tenure, &c.

Co. Inſt. p. 1. 117. a. 2. — Leſſee, Villain.

21 If a man be Leſſee of a Villain, for life, for years, or at will, and the Villain purchaſe Lands in fee, if the Leſſee entreth into the Lands, he ſhall hold the Lands as a Perquiſite to him and his heirs for ever; for the Law reſpecteth the quality and not the quantity of his Eſtate, &c.

Co. ib. 90. b. 4. — Relief.

22 A tenant holdeth of his Lord certain Lands in ſoccage, to pay yearly a pair of guilt Spurs, or five ſhillings in money at the Feaſt of Eaſter: In this Caſe the rent is uncertain, and the tenant may pay which of them he will at the ſaid Feaſt, and likewiſe the tenant may pay which of them he will for relief; but if he pay it not when he ought, then may the Lord diſtrain for which of them he will: Howbeit if the tenure be to attend on his Lord at the Feaſt of Chriſtmas, or to pay ten ſhillings, there the relief muſt be ten ſhillings, becauſe it is againſt the nature of the other to be doubled.

Co. ib. 207. a. 2. — Payment of money or wheat. Diverſity.

23 If an Obligation of 100 l. be made for the payment of 50 l. at a day, and at the day the Obligor tender it, yet in an Action of Debt upon the Obligation, if the Defendant plead the tender and refuſal, he muſt alſo plead, that he is yet ready to pay the money, and tender the ſame in Court: But if a man be bound in 200 quarters of wheat for the delivery of 100 quarters, and the Obligor tender at the day the 100 quarters, &c. he ſhall not (in ſuch caſe) plead uncore prit, becauſe although it be parcel of the Condition, yet they being *bona periura*, it will be a charge for the Obligor to keep them; and therefore (in ſuch caſe) he is not bound to ſay, he is always ready to pay the ſame 100 quarters, &c. Vide Dier. 150. 84.

Co. ib. 207. b. 4. — Conditions collateral.

24 If a man make a ſingle bond, or acknowledge a Statute or Recognizance, and afterwards make a defeaſance for the payment of a leſſer ſum at a day, if the Obligor or Conuſor tender the leſſer ſum at the day, and the Obligee or Conuſee refuſeth it, he ſhall never have any remedy at Law to recover it, becauſe it differeth in quality from the ſum contained in the Obligation, Statute, or Recognizance, becauſe it is no parcel thereof, but contained in the defeaſance made at the time, or perhaps after the Obligation, Statute, or Recognizance: And in ſuch Caſe, in pleading of tender and refuſal, the party ſhall not be driven to plead Uncore prit, neither hath the Obligee or Conuſee any remedy by Law to recover the ſum contained in ſuch defeaſance: ſo likewiſe it is, if a man make an Obligation of 100 l. with condition for the delivery of corn or timber, &c. or for the performance of an Arbitrement, or the doing of any Act, &c. This differing in nature from the ſum contained in the Obligation, and being no parcel thereof is collateral thereunto; And therefore in ſuch Caſe alſo, a tender and refuſal is a perpetual bar. The like Law it is of tender and refuſal of money upon a Mortgage of Lands, becauſe the money is collateral, and differeth in nature from the Lands.

Dier. 5. b. 26. H. 8. 1, 2. — Rent reſerved a chattel.

25 A man ſeiſed of Land deviſable by the cuſtome, leaſeth it for years, reſerving rent, and deviſeth the rent to a Stranger, and dies, and the Stranger is ſeiſed of the rent, and dies alſo. In this caſe, the rent being in its nature but a chattel, ſhall go to the Executor of the Deviſee, and not to his Heir.

Dier. 30. b. 206 28. H. 8. — Debt againſt Executors.

26 In Debt againſt Executors brought in the County of Middleſex, the Defendants plead fully adminiſtred. The Plaintiffe ſaith, that they

they have Aſſets in Eſſex, and thereupon the Defendants demurred; and judgment was given for the Plaintiff, becauſe Aſſets (in their nature) is a thing tranſitory, and not local; and if it had been in iſſue and triall of a Jury of Middleſex, they might have found the Aſſets in any County of England.

Rent-ſervice apportionable. 27 Rent-ſervice was apportionable at the Common Law before the Statute of Quia Emptores terrarum, becauſe there are divers kinds of Rent-ſervice, which are not within that Statute, and yet were apportionable by the Common Law; as if a man maketh a leaſe for life or years, reſerving a rent, and the Leſſee ſurrender part of the land to the Leſſor, or if the Leſſor recover part of the land in an Action of waſt, or entreth for a forfeiture, or granteth part of the reverſion to a ſtranger, or if tenant by knight-ſervice by his laſt will in writing deviſeth two parts of his lands; In all theſe caſes the rent ſhall be apportioned, & yet they are not within the words of the ſaid Statute; but the reaſon ſeems to be, for that rent-ſervice is of the nature of the land, and therefore partable, as it is partable, according to Max. 64. It is otherwiſe of a rent-charge, becauſe it is not of the nature of the land, being againſt common right, and collateral to the land. Co. Inſt. p. 1.

Livery out of ward. 28 A livery to be out of ward being in nature of a reſtitution, ſhall be taken and expounded favourably; And therefore if livery be made of a Manor cum pertinentiis, the Heir ſhall thereby have the Advowſon appendant: It is otherwiſe of Grants by Letters Patents. Co. ib. 77. a. 4.

Confirmation. 29 If a Leaſe for life be made to two, to have and to hold the one moity to the one for life, and the other moity to the other for life, and the Leſſor confirm their eſtate in the land, to have and to hold to them and their heirs; In this Caſe, they are tenants in common of the Inheritance; for (regularly) the confirmation ſhall inure according to the quality and nature of the Eſtate which it doth inlarge and increaſe. Co, Inſt. p. 1. 299. b. 1.

Partition. 30 There being three Coperceners of land in Gavelkind in reverſion, depending upon an Eſtate for life, the youngeſt aliens his part by fine in fee, the tenant for life dies, and the eldeſt ſon enters into the whole, and then the ſecond brother and the alienee bring a joynt writ of partition upon the Statute of 31 H. 8. 1. againſt the eldeſt brother: But it was adjudged, that it was not maintainable; becauſe they were entituled to writs of partition of ſeveral natures, viz. the one to a writ of Copercenarie at the Common Law, and the other to a writ of Partition by the Statute, and therefore could not joyn. Dier. 128. a. 58 2, 3. P. M.

Deprivation. 31 The Preſident of Magdalen College in Oxford being deprived by the Biſhop of Wincheſter, their Viſitor, could not have an Appeal to the Delegates, becauſe the deprivation was temporal, and not ſpiritual, and therefore out of the Statute of 25. H. 8. 19. And ſo he was put to his Aſſiſe, Dier. 209. 26. 3, 4. Eliz.

Nuſance. 32 Tenant for life of an houſe brings an Action upon the Caſe againſt one, who ſtopped the way in his land, which time out of mind had been a paſſage betwixt the houſe and a Park, and albeit the Park was the Leſſors, and not the tenants for life, yet it was held by the Court, that ſuch an Action lay not for the tenant for life, but an Aſſiſe of Nuſance. Dier. 250. 88. 8 Eliz.

Rent in groſſe or at. 33 The Lord Dacres lets certain land and ſtock to friends, who covenant to pay 100 l. per annum to him and his wife, his heirs & aſſignes, during the term, and alſo 2000 l. at a certain day for the marriage-portion of his daughter, he dies, his ſon within age, & ſuffers more then a third part of all his land to deſcend, after the Feme dies, And in this Caſe it was adjudged, that the Queen ſhould not have the 100 l. per annum, but the executors of the Feme, becauſe (in nature and quality) it is not a rent which goeth to the heir, but a ſum in groſſe. Dier. 275. 49. 10 Eliz.

81 In perſons, the Law looketh at the excellency of ſome, and giveth them ſingular Priviledges, and prehemminences above others, as to the King, the Queen his Wife, Noblemen, and Peeres of the Realme; alſo unto perſons of holy Church.

Co. Inſt. pt. 1. 21. b. 3. 1 If the King give Land to a man with a Woman of his kindred in Frank-marriage, and the Woman dieth without Iſſue, the man in the Kings Caſe ſhall not hold it for his life; becauſe the Woman was the cauſe of the gift; but it is otherwiſe in the Caſe of a common perſon. Frank-marriage.

Co. ib. 31. b. 4. 2 If a Common Perſon take an Alien to Wife and die, albeit he were ſeiſed of Lands in Fee, or Fee taile; yet ſhall not his Wife be endowed: but if the King take an Alien borne, and die, ſhe ſhall be endowed by the Law of the Crowne, And yet Edmund brother to E. 1. married the Queen of Navarre, and died; And it was reſolved by all the Judges, that ſhe ſhould be endowed of the third part of all the Lands, whereof her husband was ſeiſed in fee. An alien.

Rot. Parl. 26 E. 1. Rot. 1.

Co. ib. 90. a. 4. & F. N. B. 33. p. q. r. 3 If a Biſhop hath an Advowſon, and the Church becomes void, and the Biſhop dies, neither the Succeſſor nor the Executors ſhall preſent, but the King, becauſe it is but a Choſe in action. Biſhop Advowſon.

Co. ib. & 388. a. 2. & F. N. B. 33. p. q. r. 4 A man holds the manner of D. whereunto an Advowſon is appendant, of the King by Knights ſervice, the Church becomes void, and then the Tenant dies, his heire under age, in this Caſe, the King ſhall preſent, and not the Executors of the Tenant; And this is by reaſon of a prerogative, that belongeth to the King to provide for the Church being void, for, where the tenure by Knight-ſervice is of a Common Perſon, the Executors of the Tenant ſhall preſent, &c. Advowſon, Wardſhip, Executors.

Co. ib. 108. b. 2. 5 Tenure by rendring yearly to the Lord, a Bow, a Sword, a Dagger, a Gantlet, or ſuch other ſmall things belonging to warre, in Caſe of a Common Perſon, is nothing elſe, but plain ſoccage, ab effectu; becauſe it had ſuch effects and incidents as belong to ſoccage; and neither ward nor marriage, &c. But in the Kings Caſe, in reſpect of the dignity of the Kings Perſon, it obtaineth the Name of Petie Serjeancie, &c. Petty Serjeancie, Soccage.

Co. lib. 123. a. 2. & Litt. § 177. 178. 6 If a Villain purchaſe Land and alien it before the Lord enter, the Lord is barred for ever; For, before the Lord enters, he hath neither jus jure nec jus ad rem, but onely a poſſibilitie of an Eſtate, which Eſtate he muſt gaine by his entry; And therefore if the Villain doth by way of prevention alien, before the Lord doth enter, the Lord is for ever barred of the poſſibilitie, which he had to enjoy the Land: Si autem ſervus vendiderit feodum, quod ſibi & hæredibus perquiſiverit, antequam Dominus ſeiſinam inde cæperit, valet donatio, & Dominus ſibi ipſi imputet, quod tantum expectavit; ſaith Fleta: Howbeit if the Kings Villain purchaſeth Land, and alieneth, before the King (upon an Office found for him) doth enter, yet the King after Office found ſhall have the Land, Quia nullum tempus occurrit Regi; And yet after Office found, the King ſhall not have the mean profits; becauſe the title commenceth by the ſeiſure. It is otherwiſe of Goods in the Kings Caſe; For if the Kings Villain acquire any Goods or Chattels, the property of them is in the King before any ſeiſure or Office: And it is well ſaid of an Ancient Author, Al Roy quant al droit de la Corone, ou a franch Eſtate ne port nul temps accurre, and another ſpeaking in the Perſon Villein purchaſes Land, or goods ſeiſure.

Fleta, l. 3. c. 13 Britt. fol. 98. a. 19 E. 2. Dow. 171.

Litt. §. 178.

Mirr. cap. 3. Britt. fol. 88.

Perſon of the King, ſaith, Nul temps noſt limis quant á mes droits, &c.

rty. 7 Where a Church is preſentative, it is full by admiſſion and inſtitution againſt any common Perſon, but againſt the King it is not full before Inſtallation. Co. ibid. 119. b. & 344 a.

pur- 8 By the Common Law the Wife of the King of England is an exempt Perſon from the King, and is capable of Lands and tenements of the gift of the King, as no other Feme covert is, and may ſue and be ſued without the King; for the wiſedome of the Common Law would not have the King (whoſe continuall care and ſtudy is for the Publique, & circa ardua Regni) to be troubled and diſquited for ſuch private, and petty cauſes: ſo as the wife of the King of England is of ability and capacity to grant and to take, to ſue and to be ſued, as a Feme ſole by the Common Law; Alſo the Queen of England hath many other prerogatives, viz. ſhe ſhall find no pledges, for ſuch is her dignity as ſhe ſhall not be amerced: Neither ſhe nor the Kings Son are reſtrained by the Statute of 1 H. 4. 6. concerning grants by the King: In a Quare Impedit brought by her, ſame ſay, that plenarty is no plea, no more then in the Caſe of the King: If any Bailiffe of the Queenes bring an Action concerning the Hundred, he ſhall ſay, In contemptum Domini Regis & Reginæ: The Queen ſhall pay no toll, &c. Co. ibid. 133. a.4. & Co. l.4. 23. b. 2. *Clerke & Pennyfather's* Caſe.

ber.

arry. Bai. Hundred.

ancie part ned, di- in all. 9 If the Queenes Tenant alien a certain part of his tenancie to one, and another part to another, the Queen may diſtraine every one part for the whole, as the King may do; but other Lords ſhall diſtraine but for the rate; And therefore where the Queen ſo diſtraineth, there lyeth a writ de onerando per ſata portione: Alſo the writ of right ſhall not be directed to the Queen no more then to the King, but to her Bailiff; otherwiſe it is when any other is Lord. Co. ibid. 133. b. 1.

it of right rected.

yde counter- pleaded. 10 In caſe of Ayde prayer of the Queen, it is Domina Regina inconſulta, and the cauſe of the Ayde prayer ſhall not be counterpleaded no more than in the Kings Caſe: And ſee where the ayde ſhall be granted of the King and Queen: and where, of the Queen onely, and the of the King: 14 E. 3. Voucher 119. 21 E. 3. 53. 21 E. 3. 3. b. 17 E. 3. 65. 10 E. 3. 17. 5 E. 3. 4. 15 E. 3. Ayde del Roy, 66. 10 E. 3. 18. 26 H. 6. Ayde le Roy 24. Co. ibidem.

nch, *Marle-* diſtreſſe. 11 A protection ſhall be allowed againſt the Queen, but not againſt the King, neither ſhall the Queen be ſued by petition, but by a præcipe: The Queen is not bound by the Statute of Marlebridge for driving a diſtreſſe into another County. Co. ibidem.

nd, treaſon *ving.* 12 If any do compaſs the death of the Queen, and declare it by any overt fact, the very intent is treaſon, as in the Caſe of the King: Any man may marry the Queen Dowager without the Kings licence. Co. ibid. 133. b. 2.

hops Court Rec. certif. 13 A Biſhop being an Eccleſiaſtical Iudge, and ſometimes a Lord of Parliament, by reaſon of the Barony annexed to his Biſhoprick the Law giveth much Honor and Reverence unto him; And therefore none but the Kings Courts of Record (as the Court of Common Pleas, the Kings Bench, Juſtices of Goale-delivery, and the like) can write to the Biſhop to certifie Baſtardy, Adulterie, Legaltie of Matrimony, and the like Eccleſiaſtical matter; For it is a Rule in Law, that none but the King can write to the Biſhop to certifie; And therefore no Inferiour Court, as London, Norwich, Yorke, or any other Incorporations can write to the Biſhop; but in thoſe Caſes the Plea muſt be removed into the Court of Common Pleas, and that Court muſt write to the Biſhop, and then remand the Record again: and this is the reaſon, why a Quare Impedit and the like of a Church in Wales is the County next adjoyning, for that the Lordſhips Marchers could Co. ibid. 134. b. 2.

ſhou. ſure. ſure Impe- Wales.

not write to the Biſhop: Neither ſhall Conſulance be granted in a Quare Impedit, becauſe the Inferior Court cannot write to the Biſhop: And herewith agreeth Antiquity: Nullus alius præter Regem poteſt Epiſcopo demandare Inquiſitionem faciendam: And another ſpeaking of Loyalty of Mariage, Nec alius quàm Rex ſuper hoc demandaret Epiſcopo, quod inde inquireret: Epiſcopus alterius mandatum quàm Regis non debet obtemperare: And herewith alſo agreeth Britton.

Bract. l. 3. tr. 2. c. 6. Fleta l. 5. c. 24. Britton 248. b.

Villein. Ancient Demeſne no

Co. ibid. 137. b. 3. & F. N. B. 79, 86

If a Villain remaine in the Ancient Demean of the King a year and a day, without clayme or ſeiſure of the Lord, the Lord cannot have a writ of Nativo habendo, or ſeiſe him, ſo long as he remains and continues there: And the reaſon of this was in reſpect of the ſervice he did to the King in Plowing and tillage of the Demeanes, and other labours of Husbandry for the Kings benefit: And herewith agree old books, which ſay, that his Immunity was ſometimes granted by common conſent to the King for his profit, and for the helpe and eaſe of his Villains: So likewiſe, if a Villain be a Prieſt of the Kings Chappel, the Lord cannot ſeiſe him in the preſence of the King, for the Kings preſence is a priviledge and protection for him, 27 Aſſ. Pl. 49.

Glanv. l. 5. c. 5. Fleta l. 2. c. 44. Britton fol. 79. Mirr. cap. 2.

Priest, Chappel.

Co. ibidem.

15 If a Villain be profeſſed a Monke, or a Wife a Nun, the Lord cannot ſeiſe them, &c.

Villein.

Co. ibid. 156. a. 3.

16 If a Peere of the Realme or Lord of Parliament be demandant or Plaintiffe, Tenant or Defendant, there muſt a Knight be returned of his Jury, or elſe the Array may be quaſhed: but if he be returned, albeit he appeare not, yet the Jury may be taken of the reſidue: And if others be joyned with the Lord of Parliament, yet if there be no Knight returned the Array ſhall be quaſhed againſt all: So alſo in the like caſe in Attaint, there ought to be a Knight returned of the Jury: Note, That this preſent Parliament, which commenced Anno 16. Can. Biſhops were by Act of Parliament excluded the houſe of Lords: and therefore Quere, whether at this day this Law holds in their Caſe or no; Howbeit it ſeemes ſtill to hold, becauſe they ſtill retaine their Baronies, in reſpect whereof they enjoyed Places and had votes in that houſe, and (doubleſſe) ſhall ſtill retaine divers other Priviledges, which of right belong to Temporall Peeres, that have Baronies: Tamen quære.

Lord. Knight. Jury.

Biſhops.

Co. ibid. 156. l. 6. b. 3.

17 At the Common Law, any ſubject under the degree of a Peere of the Realme upon an Indictment or Appeale of Treaſon or Felonie againſt him, might (in favorem vitæ) challenge peremptorily, viz. 35. or any other number under three Juries: But a Lord of Parliament that being a Peere of the Realme, is to be tryed by his Peeres, ſhall challenge none of them; becauſe they are not ſworne as other Jurors be, but find the partie guilty or not guilty upon their faith or allegiance to the King, and they are Judges of the fact, and every of them doth ſeparately gyve his Judgement, beginning at the loweſt, &c. How the Common Law hath been altered concerning peremptorie Challenges, ſee Co. ubi in margine.

Challenge peremptory.

Peere, no Challenge.

Co. ibidem.

18 A Peere of the Realme or a Lord of Parliament, as a Baron, Viſcount, Earle, Marqueſſe, and Duke (propter honoris reſpectum, in reſpect of honor and Nobility) are not to be ſworne on Juries, and if neither party will challenge him, he may challenge himſelfe; For, by magna Carta it is provided, Quòd nec ſuper eam ibimus, nec ſuper eam mittemus, niſi per legale judicium parium ſuorum, aut per legem terræ: Now the Common Law hath divided all the ſubjects, into Lords of Parliament, and into the Commons of the Realme; The Peeres of the Realme are divided into Barons, Viſcounts, Earles, Marqueſſes, and Dukes; The Commons are divided into Knights, Eſquires, Gentlemen, Citizens, Yeomen, and Burgeſſes; and in judgement of

Peere no Juror.

Lords, Commons.

Trial per pares.

of Law any of the ſaid degrées of Nobility are Peers to another: as if an Earle, Marqueſſe, or Duke be to be tryed for treaſon or felonie, a Baron or any other degrée of Nobility is his Peere: In like manner a Knight, Eſquire, &c. ſhall be tryed per pares, and that is by any of the Commons, as Gentlemen, Citizens, Peesant, or Burgeſſes; ſo as when any of the Commons is to have a triall, either at the Kings ſuit, or betweene partie and partie, a Peers of the Realme ſhall not be impaneſled in any Caſe.

19 If a man maketh a Feoffment in fée, ad faciendum, or faciendo, or ea intentione, or ad effectum, or ad propoſitum, that the Feoffee ſhall doe or not doe ſuch an Act, none of theſe words make the Eſtate in the Land conditional; for in judgement of Law they are no words of Condition, and ſo was it reſolved, Hill. 18 E. in Co. Banco: But this is to be underſtood in the Caſe of a common perſon; for in the Kings caſe, theſe or the like words do create a Condition: and ſo it is alſo in the Caſe of the will of a Common perſon, &c. Co. Ibid. 204. b. 4.

20 A Common perſon being grantée of part of a reverſion of Land, ſhall not take advantage of a Condition by force of the Statute of 32 H. 8. cap. 34. As if a leaſe be made of three acres reſerving a Rent upon Condition, and the reverſion is granted of two acres, the Rent ſhall be apportioned by the Act of the parties, but the Condition is deſtroyed: for that it is future, and againſt Common right: Notwithſtanding in the Kings Caſe the Condition in that Caſe is not deſtroyed, but ſtill remaines in the King, notwithſtanding ſuch alienation of part, &c. Co. Ibid. 215. a. 3.

21 In a Writ of entry ſur diſſeiſin an eſtate made to the King makes no degrée; and therefore if a diſſeiſor by deed inrolled convey the Land to the King, and the King by his charter graunteth it over, the diſſeiſée cannot have a writ of Entry in le per & cui, but in le poſt, &c. Co. Ibid. 239. a. 2.

22 If there be Tenant for life, the remainder in taile, the remainder in fée, and Tenant in taile diſſeiſeth the Tenant for life, and dieth ſeiſed, this ſhall take away the entry of the Tenant for life: But if the Kings Tenant for life be diſſeiſed, and the diſſeiſor die ſeiſed, this deſcent ſhall not take away the entry of the Leſſée for life; becauſe the diſſeiſor could gaine no Eſtate againſt the King, and then he could not die ſeiſed of any wayes, then a bare Eſtate of free-hold during the life of the Leſſée; And Littleton ſaith, that a deſcent of an Eſtate for term of another mans life ſhall not take away an entry, &c. Ch. Ibidem 4. Litt. § 387.

23 It is ſaid: If the King die ſeiſed of Lands, and the Land deſcends to his Succeſſor, this ſhall binde the diſſeiſée, though he were an Infant at the time of the deſcent; becauſe the priviledge of an Infant in that Caſe holds not againſt the King. Co. Ibid. 246. a. 2.

24 In a writ of right of Advowſon brought by the King, the Tenant ſhall not tender the Di. Sparke; becauſe nullum tempus occurrit Regi, and therefore the King ſhall alleadge, that he or his Progenitor was ſeiſed without ſhewing any time; It is other wiſe in the Caſe of a common perſon; for then the Tenant ſhall tender a Di. Sparke againſt him, that brings the writ, to inquire of the ſeiſin alleadged in the Court, &c. Co. Ibid. 304. b. 2. & F. N. B. 31. d.

25 A grant of a Seigniory, Rent, Reverſion, Remainder, &c. to the King or by the King to another, is good without attornment, and this is by force of his prerogative. Co. Ibid. 309 b. 2. & F. N. B. 60. I

26 In caſe of a deed, nothing paſſeth before attornment: in Caſe of a fine, the thing granted paſſeth as to the eſtate, but not to diſtraine, &c. without attornment: but in the Kings Caſe, the thing granted doth paſſe both in Eſtate and in profite to diſtraine &c. without attornment Co. Ibid. 314. b. 2.

unleſſe

unleſſe it be of Lands or tenements, that are parcel of the Dutchy of Lancaſter, and lie out of the County Palatine.

Co. ibid. 318. a. 3. Quid juris clamat in Attorney

27 Tenant for life ſhall not be compelled to attorne in a quid juris clamat upon a grant of a reverſion by fine, holden of the King in Chiefe without licence; And the reaſon hereof is not, becauſe the Tenant of the freehold muſt be charged by the fine (for his Eſtate was more ancient, then the fine levied) but becauſe the Court will not ſuffer a prejudice to the King, and the King may ſeiſe the reverſion and Rent, and ſo the Tenant ſhall be attendant to another, &c.

Co. ibid. 3; 5. a. 3. Deſcent. Recovery Barre.

28 If there be Tenant in taile, the reverſion or remainder in the King, In that Caſe the Tenant in taile cannot diſcontinue the Eſtate taile; but Tenant in taile, the reverſion in the King, might have barred the Eſtate taile by a Common Recovery, untill the Statute of 32 H. 8. cap. 20. which reſtraineth ſuch a Tenant in taile; Howbeit that Common Recovery neither barred nor diſcontinued the Kings reverſion, &c.

Co. ibid. 344. b. 4. & Co. l. 6. 49 b. 4. in Boſwels Caſe. A writ of right of Advowſon.

29 At the Common Law before the Statute of W. 2. cap. 5. if a ſtranger had preſented his Clerke, and he had been admitted and inſtituted to a Church, whereof any ſubject had been lawfull Patron, the Patron had no other remedie to recover his Advowſon, but by a writ of right of Advowſon, wherein nevertheleſſe the incumbent was not to be removed: And ſo it was alſo at the Common Law, if an uſurpation had been had upon an Infant, or Feme Covert, having an Advowſon by deſcent, or upon Tenant for life, &c. the Infant, Feme Covert, and he in the reverſion were driven to their writ of right of Advowſon; For at the Common Law if the Church were once full, the incumbent could not be removed, and plenarty generally was a good plea in a Quare Impedit, or aſſiſe of Darreine preſentment: Howbeit at the Common Law, if any had uſurped upon the King; and his preſentee had been admitted, inſtituted, and inducted (for without induction the Church had not been full againſt the King) the King might have removed him by Quare impedit, and ſo have been reſtored to his preſentation; for, therein he hath a prerogative, quod nullum tempus occurrit Regi, &c. Plenary. Quare Impedit.

Co. ibid. b. 2. F. N: B. 34. c Revoke preſentation.

30 If the King do preſent to a Church, and his Clerke is admitted and inſtituted; yet before induction the King may repeale and revoke his preſentations, &c.

Co. ibid. b. 3. Entry. Fained. Recovery.

31 A fraudulent Act or entry, or a falſe, a feined recovery againſt Tenant for life or in taile, the reverſion or remainder in Fee to the King, ſhall never deveſt any Eſtate, remainder, or reverſion out of the King: It is otherwiſe in the Caſe of a common perſon.

Co. l. 4. 23. b. 2. In Clerke and Penni-fathers Caſe. Copi-hold Mannor.

32 If the Queen be onely Tenant for life of a Copi-hold Mannor, and a Copi-hold of inheritance eſcheats unto her, the Queen may grant it, to whom ſhe pleaſeth, and that ſhall bind the King his heires and ſucceſſors for ever; for ſhe was Domina pro tempore; And the cuſtomes of the Mannor alſo ſhall bind the King, &c.

Co. l. 4. 55. a. 4. in Sadl. Caſe. Titles concurre.

33 When the Kings title and the title of a ſubject concurre in commencement, the Kings title ſhall be preferred (as Welton holds, Pl. Co. 263. b.)

Co. l. 4. 58. a. 3. in the Sadlers Caſe. Eſcheate.

34 When the King's Tenant ſeiſed of Land in Fee dies without heire, the Fee and frank-tenement is preſently (after his death and before office thereof found) caſt upon the King; for in ſuch Caſe it ought to be in ſome perſon or other, and if any perſon enter into the Land, and take any of the profits, an information of Intruſion by the King may be preferred againſt him before office or ſeiſure; becauſe the King immediately after the Tenants death is in actual poſſeſſion, and hath

hath not only a Freehold in Law; as a Demandant, or Plaintiff in such Case hath: And so is that, when his Ancestor is taken, then when the Kings Tenant dies in possession without heire; so as in that Case possessio est vacua, and in none; where the Law adjudgeth the King (unto whom no laches can be attributed) in actual possession presently: but when another is in fesin and possession at the time of the descent; so that Possessio plena est & non vacua. In that Case the King shall not be adjudged in possession, until that fesin and possession be removed; as if the Kings Tenant be disseised and die without heire, or the Kings Villein, or the Alienee in Mortmain be disseised and die without heire, and all that found by Office. In those Cases the King shall not be in possession, until the possession and fesin of the intruder and tenant be removed. But if a Reversion descend to the King after the death of his Father, or of any other Collateral Ancestor, the King shall be immediately in actual possession before entry or fesin: So likewise if the King make a Lease for life, or a gift in tail, and the Lessee dies, or the donee dies without Issue: In that Case, the possession shall be actually in the King without any entry or fesin, and with this accords 9 H. 7. 2. 6. where it is expressely said, that when once in actual possession, it shall be adjudged in the King according to his title: and so the doubt, which Dyer. makes Prerogative, 53. b. is well resolved.

The Kings Tenant.
Alien.
Remaine.

Condition. Demand.

35 If the King make a Lease for years rendring Rent with Condition to be void upon non-payment of the Rent, the King shall take advantage of that Condition without any demand, it being a thing indecent and against the dignity of the King to wait upon his subject, or to demand any thing of him: it is otherwise, if the King grant over his reversion; For his grantee shall not take advantage of the Condition without demand of the rent: & this is by reason of a personal prerogative (in this Case) annexed to the person of the King, and not in respect of the nature and qualitie of the Rent: for, that remaines the same, whether paid to the King or to a subject, upon the ground or aliter where, &c. Co. l. 4. 73. a. in *Boroughs* Case.

Two Houses demised.

36. Two houses are let to one manby one demise, rendring for the one 4 l. per annum, and for the other 20 s. per annum, with proviso, that if the said Rent of 5 l. be arreare in part or in all, then the Lessor to re-enter. The Inheritance of these Houses afterwards escheats to the King, who after grants the reversion of that, upon which 20 s. per an. is reserved to I. S. the Rent thereof is arreare; In this Case, the patentee cannot enter for the Condition broken; because by the severance of any part of the reversion all the Condition (as to a Common person) is intirely destroyed: It is otherwise in the Kings Case: for the Condition remaines intirely in the King with the reversion of the other House, and that is in respect of his prerogative, &c. Co. l. 5. 55. b. 3. & 56. a. 1. *Knights* Case.

One fold, Rent. Arreare. Condition.

Kings grants favourably interpreted.
Villein.
Alien.
Edrowson.

37 The Law makes a difference between the Kings grants (who is alwayes presumed to intend Jus regni pro bono publico omnium, &c.) and the grants of subjects, who have leasure to attend their private affairs; for, the grants of a subject are alwayes interpreted most strongly against him, that makes them: but the Kings grants are alwayes taken with a favourable and beneficial interpretation, so that no prejudice may happen to him by construction or implication upon his grant, other wise then was truly intended by it: And therefore if the King grant Land to I. S. and his heires, when in truth I. S. is the Kings Villein, this shall not enfranchise the Villein by Implication; There is the same Law of an alien nee: 17 E. 3. 39. An Advowson of a Prebend is holden of the King was alienen to an Abbot and his successors, and the King grants to the Abbot and his successors, that they shall hold the Prebendary in proper use; nevertheless he shall seise the Advowson Co. ibid. 36. a *Knights* Case. & Co. l. 7. 14 a. in *Englefields*.

ſon attornies in Normandie, and ſhall deſtroy the Appropriation; for he ſhall not be oules of priviledge to the Invaſion by Supplication: Aun in 5 R. 2. 4. 22 E. 4. 48. 27 H. 8. If divers are bound to the King, & the King releaſe to one of them, this ſhall not diſcharge the other. in 6 H. 7. 15. & 11 H. 7. 10. If the King releaſe all actions, right, & Inheritance ſhall not be there by releaſe; 21 H. 7. 7. The King grants Lands in Fee upon condition that the grantee ſhall not alien, this is good: Notwithſtanding in all theſe caſes the Lands otherwiſe in the caſe of a common perſon, &c.

Debt Releaſe.

Releaſe to alien.

Co. ibid. a. 4. *Knights* Caſe.

38 In many caſes the King that claimes only a ſubject, ſhall be in better caſe (in reſpect of the dignity and prerogative incident by the Law to the Royal perſon of the King) than the ſubject himſelfe, by whom he claimes: As if the King have a rent ſucke by attainder of treaſon, or by grant, &c. he ſhall diſtraine for it not only in the Lands charged, but likewiſe in all his other Lands, and yet the ſubject, by whom the King claimes, ſhall not diſtraine for it at all: If a ſubject hath a recognizance or obligation, and afterwards he is attainted or attainted: in this caſe, the King ſhall ſeiſe all the Lands of the Conuſee, or obligee, whereas he himſelfe could have but a moity: if a ſubject upon Law reſerving rent, and a re-entry upon default of payment thereof: in this caſe the ſubject ſhall not take advantage of ſuch a condition without demand of the rent, &c. but if the inheritance of that Land come to the King by Act of Parl. attainder, grant, &c. he ſhall take advantage of the breach of ſuch a condition without demand of the rent, &c. if the King purchaſe a Seigniory, of which Land was holden by poſterity, the King ſhall be in better condition than the ſubject, from whom he claimes, and in that caſe ſhall have the priority: and ſo ſhall his grantee alſo, &c. as is holden in 24 E. 3. 65. Fitz. tit. gard. 27, 47.

Rent-ſucke diſtraine.

Recognizance Oblig.

Seiſe all. Condition. Demand. Priority.

F. N. B. 142.

Co. l. 5. 91. b. 3. in *Semaynes* Caſe.

39 In all caſes when the King is partie, the Sheriffe (if no doore be not open) may (after notice given of the cauſe of his coming, & requeſt made to have the doore opened) break open the houſe of the partie, either to take him or to make other execution of the Kings precepts, if he cannot otherwiſe enter into it, but ſo it is not, in the caſe of a ſubject, &c. So for felonie or ſuſpicion of felonie, the King meſſenger may breake the houſe to take the felon; becauſe in every felonie the King hath an Intereſt, and where the King hath Intereſt, the writ is Non omittas propter aliquam libertatem: and therefore the liberties or priviledge of an houſe ſhall not hold out againſt the King: & beſides it concernes the Common Wealth that felons be apprehended, and in that reſpect alſo the King hath a ſpecial Intereſt, being the head of that body, &c.

Sheriffe break open doores.

Felonie.

Co. l. 5. 104. a. in *Bakers* caſe.

40 T. 42 E. in B. R. in Ejectione firmæ, it was reſolved, that if the plaintiffe ſhew in evidence any matter in writing, Record, or Sentence in the Eccleſiaſtical Court, whereupon Queſtion in Law may riſe, and the defendant offers to demurre, &c. the plaintiffe cannot refuſe to ſtand in demurrer, unleſſe he will waive his evidence; So if the plaintiffe produce witneſſes, and the defendant admit their teſtimonie to be true, he may demurre, &c. So alſo may the Parliament demurre, mutatis mutandis: Howbeit upon evidence in an Information for the King his Counſell ſhall not be compelled to demurre: But in that Caſe, the Court may direct the Jury to find the ſpecial matter, and thereupon they will adjudge the Law, as appeares in 34 H. 8. Dier 53. And this is by reaſon of the Kings prerogative, who may alſo waive the demurrer, and take iſſue at his pleaſure, Nota bene.

Demurre.

Co. lib. 5. 106. a. 4. & 108. b. 1. in Sir *Henry Conſtables* caſe.

41 Originally the Common Law gave unto the King all ſuch things, as were In nullius bonis, as Wrecke, viz. Goods, quæ naufragio ad terram appelluntur: Flotſan, viz. When the ſhip is caſt away or otherwiſe periſhed, and the Goods lie upon the ſea: Jetſam as when the ſhip is in danger to be periſhed, and to ſink, throws the ſhip.

Things *In nullius bonis.*

Wrecke.

the

Estrayes.

the Goods are cast into the Sea, and after notwithstanding the Ship, perisheth: Lagan (vel potius Figan) as when the Goods so cast out are so ponderous, that they sinke, and the Mariners to the end they might find them again fasten a piece of Corke or a Boye to them, that will not sinke, and therefore this seemes to be called Ligan à Ligando: It gave also to the King Estrayes (which Bracton calles Animalia vagantia, and others Animalia vacantia, quia Domino vacari debent: Also treasure-trove, and the like; Because by the Rule of the Common Law, when none could claime a property in any Goods, the King was to have them by his prerogative: And therefore Bracton saith, Sunt alia quædam, quæ in nullius bonis esse dicuntur, sicut Wreccum maris, Grossus Piscis, sicut Sturgio & Balena: & aliæres, quæ Dominum non habent, sicut animalia vagantia, & quæ sunt Domini Regis propter privilegium. And note, that the King shall have Flotsan, Jetsan, and Lagan by his prerogative, as well as wracke; Albeit they be, in or upon the Sea: for the Sea is of the Kings Ligeance, and parcel of this Crowne of England, as it is holden in 6 R. 1. protection 46. and Britton cap. 33. agrees well with the opinion of Bracton, that wracke, &c. are things in nullius bonis, and come into the hands of the subject Originally by Kings grant, his words are these; Et ausi purchas lou per franchise grantee par nous de choses trovves en nulluy biens, si come de wrecke de meer, & bestes estrayantes, of Conies, Levres, & pessons, & Fesants, & Pertris, & autres Bestes sauvages, par franchise de aver wrecke de meer trouve en son soil, & waise & estray trouve en son fee, garrennes en ses demesnes terres, &c.

Mare Clausum.

Bract. l. 3. c. 3.

Britt. c. 33.

Lady Peere. Arrest.

42 A Countesse by descent or mariage cannot be arrested for debt or tresp as, 1 In respect of her dignity: 2 The Law presumes, that she hath sufficient in Lands and Tenements, so hereby to be distrained; for albeit in respect of her sex she cannot sit in Parliament, yet she is a Peere and shall be tried by her Peeres, as appeares of 20 H. 6. cap. 9. which was nothing else but a declaration of the Common Law: So it is also of a Baron, that is a Peere of Parliament. 11 H. 4. 15. In homine repligiando against the Lady Spencer, it appeares, that the said Lady was a Peere of the Realme.

Co. l. 6. 52. b. 3. in the Case of *Isabel* Countesse of *Rutland.*

Upon account a Lady not examined.

43 In 3 H. 6. 48. A Writ of debt upon arrerages of accompt was brought by the Lady of Aburgavenie against another, the Defendant pleads Rien luy doit, and is ready to make his Law, and prayes by force of the Statute of 5 H. 4. cap. 8. that the Parliament might be examined, which Act is generall, viz. that examination shall be made, which is alwayes intended upon oath: And there Cokein, who gave the Rule, said, La Dame d'Aburgavenie est un Peere del Realme, & ne sera bien fait de luy faire venir d'estre examine: Car par mesme la reason nous Dames faire venir chescun Duke ou Countée d'Angliterre. Rolfe Serjeant, purquoy nous? Sr. Le dit Statute est general, & est fait pur chescun home haut & base; A que Cokein dit, le ley voit over diversity pur enter Seignior ou Dame, &c. & auter Common Person: By which book it may be observed, that a Lady, which is but the wife of a Baron is a Peere of the Realme, and is in equipage (as to Nobility and privileges incident to their dignities) with Dukes, Earles, &c.

Co. ibid. 53. a. 1.

And no Juror.

44 In 48 E. 3. 30. Sir Ralfe Everden Knight brings a Writ to the Chancery and also a Writ of the Privy seale to the Justices, rehearsing, that he was a Baron, and commanding them to discharge him of his oath in juratis accessis & recognitionibus quibuscunque: because the Barons ought not to be troubled upon Inquests and Recognitions against their wills; and by vertue hereof he was clearly discharged thereof. See more examples to the same purpose, ibi in marg.

Co. ibid. 53. a. 2.

Co. l. 7. 25. b. 1. in *Calvins* Case

Peace & warre. Denization.

45 Fœdera percurere, to make Leagues; both onely and wholy pertaine to the King, and not to the subject; so also doth Bellum indicere: Likewise the King onely without the subject may make not onely letters of safe conduct, but letters patents of Denization, to whom and how many he please, and may enable them at his pleasure to sue any of his subjects in any action whatsoever, real or personal, which the King could not do without the subject, if the subject had any Interest given unto him by the Law in any thing concerning an Alien borne: May, the Law is more precise herein, then in a number of other Cases, of higher Nature; For the King cannot grant to any other to make of strangers born, Denizens, it is by the Law it self so inseparably and individually annexed to his Royal Person (as the Book is in 20 H. 7. 8.) because the Law esteemeth it a point of high prerogative, Jus majestatis, & alter insignia summæ potestatis, to make Aliens borne, subjects of the Realme, and capable of the Lands and Inheritances of England, in such sort as any natural borne subject is: And therefore by the Statute of the 27 H. 8. cap. 24. many of the most ancient prerogatives, and Royal Flowers of the Crowne, as Authority to pardon Treason, Murder, Man-slaughter, and Felonie, Power to make Justices in Eyre, Justices of Assise, Justices of Peace, and Gaol-delivery, and the like, having been severed and divided from the Crowne were again remitted to the same: But authority to make Letters of Denization, was never mentioned therein to be returned; because there was never any that claymed the same by any patent whatsoever, being a matter of so high a point of prerogative, &c.

Co. l. 7. 14. a. 4. in *Englefields* Case.

A Covenant. Power of Revocation.

46 A. Seised of the Manor of Dale in Fee, Covenants with B. to stand seised to the use of himselfe for life, the remainder to B. in tail, the remainder to B. in Fee, with proviso, that upon delivery or tender of a ringe to B. by himselfe or Another; as the Estates shall be void: A. is out-lawed for treason; the King seiseth the Land, and lets a Lease to D. for 40 yeares; and after the King gives a Commission under the Great Seale to B. to retake the ring to B. according to the Condition: In this Case; if a Common Person had enjoyned the Kings Estate, by making such a Lease of 40 yeares, he had utterly deprived himself of revoking the Estate, and of taking advantage of the Condition; because his Act shall be most interpreted against himselfe: But (in that Case) the Kings demise shall not enure (to his speciall prejudice) to two intents, &c. To a demise of Land, and also to a suspension of his Condition, whereby he might defeat the Estate for life, and the other Estates, that depend upon it; or to a demise in respect of his present Estate pur auter vie, and also to a Confirmation in respect of his Condition (whereby otherwise he might defeat all) as shall be also in Case of a Common Person: For the Kings grant shall always be taken according to his expresse intention comprehended in his grant, and shall not extend to any other thing by Construction or Implication, when it appeares not in his grant, that his Intent extended unto it: and therefore in such Case, the King ought to be truly informed; and he ought to make a speciall and particular grant, which by expresse words may enure to all such severall intents, as are desired, &c.

Treason. Seisure.

Demise by the Kings power of Revocation remaines.

Co. l. 7. 16. b. 4. in the Case of Swans.

47 All white Swans not marked, which have gained their liberty: and swim in an open and common River, may be seised to the use of the King by his prerogative; because Volatilium (quæ sunt ferarum naturæ) alia sunt regalia, alia Communia: Now a Swan is a Royal bird; and therefore if the propertie thereof be not known; it belongs to the King by his prerogative: May there was always an ancient Officer of the King, called Magister deductus Cignorum, who continues even to

Swans wilde.

to this day: Nevertheleſſe, the ſubject may alſo have property in white Swans not marked, as ſome may have Swans not marked in their private waters, the property whereof belongs unto them, and not unto the King: And albeit they eſcape out of their private waters, yet they may take them, and convey them home again: And with this agrees Bracton, lib. 2. cap. 1. fol. 9. Si autem animalia fera fuerint manſueta, & ex conſuetudine eunt & redeunt, volant & revolant, (ut ſunt Cervi, Cigni, Pavones, Columbæ, & hujuſmodi) eo uſque noſtra intelligantur, quamdiu habuerint animum revertendi. But if they once gain their naturall liberty, and be found in open and common Rivers, the Kings Officer may ſeize them in the open and common River for the King; becauſe one white Swan without ſuch purluit (as is aforeſaid) cannot be known from another. And when the property of a Swan cannot be known, (it being of its nature a Royal Fowl) it belongs to the King, &c.

not in private waters.

of Corn-

ance of t of Par-

ſon a- the ce.

ſance.

ers. ciaments

ndment writ.

Kings ter ſhall terpreted fulfil the s intent.

48 In the Princes Caſe (Co. l. 8. fol. 18. a.) It was reſolved, that the Act of 11 E. 2. by force whereof the Kings eldeſt ſon was made Duke of Cornwall, was ſuch an Act, whereof the Judges and all the Realm ought to take Conuſance; becauſe it concerned the King, and his firſt-born ſon and heir apparent to the Crown for the time being, perpetuis futuris temporibus; for every ſubject hath intereſt in the King, and none of his ſubjects who are under his Laws, are divided from him, being their Head and Sovereign; So that the Kings affairs concern the whole Kingdome, and eſpecially when the Prince, the firſt begotten ſon of the King, and his heir apparent to the Crown is therein concerned: Corruſcat enim Princeps radiis Regis Patris ſui, & cenſetur una perſona cum ipſo Rege, as it is declared in the Act of Parliament of 38 H. 6. And therefore if any ſhall intend the death of the Prince, and ſhall make declaration thereof by ſome overt Act, that is, Crimen læſæ Majeſtatis, high Treaſon, by the ancient Common Laws of England, and ſo declared by the Statute of 25 E. 3. &c. Go. lib. 8. 28. a. 3. in the Princes Caſe.

49 1 H. 5. fol. 7. If the Prince, as Prince of Wales, hath judgment to recover, and afterwards the Crown deſcends to him, he ſhall, as King, ſue execution. Co. lib. b. 25

50 The Act of the 35 H. 8. which concerns the Capacity of the Queen was ſuch an Act, whereof the Judges ought to take Conuſance, becauſe it concerned the Kings Wife, as it was reſolved in the Lord Barkleys Caſe, Pl. Co. 231. Co. ibidem.

51 There are ſome perſons which ſhall not be amerced, and therefore (by conſequence) ſhall finde no pledges, as the King, and alſo the Queen, who (as to that) participates of the Kings Prerogative, F. N. B 31. f. 47. c. 101. a. 18 E. 3. 2. Br. amerciament 53. Co. l. 8. 61. b. 4. in Beechers Caſe.

52 An Original writ by the Common Law was not amendable in the caſe of a common perſon, for which ſee 13 E. 3. Tit. Amendment 63. which was before any Statute made concerning Amendment, &c. And 16 E. 3. Jeo. Variance 59. and 29 E. 3. Amendment 68. But in the Kings Caſe in a Quare Impedit, where the Quare Impedit was præſentere for preſentare, and after exception taken to it, and before anſwer, by the advice of the Chancellor, (out of which Court that writ iſſued) and of the Juſtices of the Kings Bench, the writ was amended in the Chancery, and the defendant was made to anſwer thereunto by award, Vide 4 H. 6. 46. & 46. Aſſ. Pl. 26. Co. l. 8. 156. b. 2. in Blackmores Caſe.

53 When the Kings Charter may be taken to two ſeveral intents, and both intents are of effect and good, in many Caſes it ſhall be taken to ſuch an intent, as ſhall be moſt beneficial for the King; but if it may be taken to one intent of effect and good, and to another intent void and of no effect; it ſhall then be taken and conſtrued to ſuch an intent, Co. l. 8. 167 a. 4. in the Earl of Cumberlands Caſe.

as

as that the Kings Grant may take effect, and that (in judgment of law) ſhall be underſtood to ſtand with the Kings intent; for it was not his intent to make a void Grant: And with this agrees the Book in 21 E. 4.44. In the Abbot of Walthams Caſe, and the reſolution in the Earl of Cumberlands Caſe in the 8 Report. 167. where the Caſe was, that E. 2. granted the Caſtle of Skipton, to Robert de Clifford in tail, and H.6. grants to Thomas Lord Clifford (Coſin and Heir of the body of Robert the reverſion of the ſaid Caſtle, necnon Caſtrum, &c. Here, the Kings intent appeared to be, that Thomas Lord Clifford ſhould have all his Eſtate in the Caſtle: And therefore whether it be taken to be a grant of the Reverſion, in caſe the former grant in tail was good, or of the poſſeſſion, in caſe that former grant was void, it is not material, in regard it appears clearly by the expreſſe words of the Charter, that the King intended, he ſhould have it in poſſeſſion, either the one way or the other: So if the King grant Totum illud Manerium, ſive firmam de D. or totam illam Rectoriam ſive Advocationem de D. In this Caſe alſo, whether the King hath a Mannor, or elſe a Farm and no Mannor, or a Rectory Impropriate, or elſe an Advowſon, and no Rectory, that which the King hath, paſſeth; for the effect of the Grant is, that be it Mannor or Farm, Rectory, Impropriate, or Advowſon, that which the King in truth hath, paſſeth by the Grant.

Co.l.9.38.b.3. in *Henſloes* Caſe.

Goods of Inteſtate.

54 Of ancient time, before the Statute of 31 H.3. cap.11. when a man died intеſtate, and did make no diſpoſition of his goods, nor committed his truſt to any in that behalf: In that Caſe the King (who as Parens Patriæ, hath the ſupream care to provide for all his Subjects: to the end, every one may injoy that, which he ought to have) did uſe by his Miniſters to ſeiſe the goods of the Inteſtate; to the intent, that they might be preſerved and beſtowed for the burial of the dead, for the payment of his debts, for the advancement of his wife and iſſues if he had any, and if not, then of thoſe of his blood: And this appears in Rotulis Clauſis de 7 H.3.M.16. Bona Inteſtatorum capi ſolebant in manus Regis, &c. And after wards this care and truſt was committed to Ordinaries; for there could be found none more fit to have ſuch care & charge of the Inteſtates tranſitory goods after his death, then the Ordinary, who all his life had (or at leaſt ought to have had) the care and charge of his immortal ſoul, as it is ſaid in Pl. Co.280. in Greisbrooks Caſe; And therefore the Ordinary was in that reſpect appointed in loco parentis, And this appears alſo by the conſtruction of John Stratford, Arch Biſhop of Canterbury, at a Synod in London, Anno Domini 1380. where he confeſſed, that the Adminiſtration of the goods of an Inteſtate was granted to the Ordinaries, Conſenſu Regis & Magnatum Regni, &c.

Ordinaries

Co.l.9.49.a.1 in the Earl of *Shrewsbury's* Caſe.

Stewardſhip

55 If the King grant the Office of Stewardſhip of the Mannors of D. and S. to an Earl, without power to make Deputies; nevertheleſſe, in reſpect of the meanneſſe of the Office in a baſe Court, and of the dignity of his Perſon, being an Earl, it is implied in law for convenience, that he may in that Caſe make a Deputy, for whom he ought to anſwer, ſo that no prejudice may happen to the King: And his Deputy ſhall execute Officium laboris, as to hold a Court Baron, and to enter Pleas, Surrenders, &c. And need requires in Caſes of difficulty, or which concern the Kings profit, the Earl ſhall execute Officium fiduciæ, ſcientiæ, & ingenii. For, Comites dicuntur à comitando, quia comitantur Regem. Comites à comitatu, ſive à ſocietate, nomen ſumpſerant, qui etiam dici poſſunt Conſules: Reges enim tales ſibi aſſociant ad conſuetudinem: And that was the greateſt title of Honour, that was from the Conqueſt, until the 11 of E. 3. when the Black Prince was created

Bracton lib. 1. cap. 8.

Duke

Duke of Cornwal, and thole which of ancient time were created Earls, were of the bloud royall; And even unto this day, the King in all his appellations ſtiles them, Per nomen chariſſimi conſanguinei noſtri, for which cauſes the Law giveth unto them high and great priviledges: And therefore their bodies ſhall not be arreſted for debt, treſpaſſe, &c. becauſe the Law intends, that they aſſiſt the King with their Counſel pro bono publico, and keep the Realm in ſafety by their proweſſe and valour: And for the ſame reaſon it is, that they ſhall not be put upon Juries, albeit that be for the ſervice of the County: Alſo if iſſue be taken, whether the Plaintiffe be an Earl, or no, it ſhall not be tried by the Countrey, but the Kings writt: Alſo the Defendant ſhall not have a day of grace againſt a Lord of the Parliament; becauſe he is conſtrained to attend the publique: And all theſe and many other be expreſſed in our Books: 48 E.3.30. Regiſt.179. F.N.B.247.48.Aſſ.Pl.c.22.Aſſ.Pl. 24. 32 H.6.27. 35 H.6.46. So that, as where ſuch an Office belongs to an infant, or to a man de non ſanæ memoriæ, they of neceſſity ought to exerciſe it by Deputy: ſo likewiſe an Earl for the neceſſity of his attendence (which the Law intends) upon the King and the Commonwealth, that Stewardſhip of a baſe Court ſhall be executed by Deputy: Alſo if a Parkerſhip be granted to an Earl, without words to make a Deputy, yet he may keep it by his ſervants: And if a Duke have licence to hunt in a Park, the Law will allow him attendance ſuitable to his condition, &c.

56 It was found by Office in 9 Jac. that Sir George Reynel had forfeited the Office of Marſhal of the Marſhalſe, by divers voluntary eſcapes; and it was reſolved, that the King might ſeiſe that Office, without ſuing out a Scire facias: And in that Caſe it was obſerved, 1 That the King in ſome caſes ſhall be in poſſeſſion by ſeiſure without Office, as in 21 H.7. and Stamf. in caſe of temporalities of a Biſhop, and of Priors aliens; becauſe the certainty of them appears in the Exchequer. 2 He ſhall ſometimes be in poſſeſſion by Office without ſeiſure, as of Lands, Tenements, Offices, &c. which are local, or wherout continual profit may be taken, as upon condition, attainder, wardſhip, &c. (Vide 2 H.7.8. Stamf.55. Dowries caſe in Rep.3. and the Sadlers, Rep.5.) And the Office albeit falſe, yet cannot be avoided without traverſe; for he cannot traverſe the Kings title in the information, &c. 20 E.4.10. 3 The King ſhall be in poſſeſſion by Office and ſeiſure of an Advowſon, and thereof he is not in poſſeſſion until preſentment, admiſſion, and inſtitution; And if the King, upon refuſal, bring a Quare Impedit, the owner may traverſe the Kings title in that Action without traverſe of the Office; becauſe it is not a manual, but an incorporal hereditament; alſo the right to preſent is caſual, and not continual. 4 The King ſhall be in poſſeſſion without office, where his tenant dies without heir, 9 H.7.2. 5 Where diſtinct matters amount to an office, in that caſe there ought to be a Scire facias, before the King can ſeiſe. 6 Where a common perſon is put to his Action: In that Caſe the King upon office is put to his Scire facias, &c. Co.l.9.95.b.37 in Sir *George Reynels* Caſe.

57 When the King grants any land without reſervation of any tenure, or abſque aliquo inde reddendo, or the like, the Law by operation of Law ſhall be holden of the King in capite by knights-ſervice, according to the rate and proportion of Land holden by knights-ſervice, viz. more or leſſe, according to the quantity of the Land, &c. Co.l.9.123.b. 3. in *Anthony Lowes* Caſe.

58 When any thing is due to the King, he ought to have the full and compleat effect of the thing ſo due unto him; As if there be Grandfather, Father, and Son of Lands, whereof ſons are holden of the King Co.l.9.132.a.2 in *Hobs* Caſe.

King in capite by Knight-service in capite, and the residue of other Lords, &c. And the Grandfather conveys all the Lands holden of other Lords, and part of the capite Lands to the Father for life; the remainder to the Son in tail, the remainder to the right heirs of the Grandfather; And the residue of the capite Lands to four younger Sons (successively) for life, the remainder to the right Heirs of the Grandfather: the Grandfather dies, the Father tenders his livery, and dies before livery sued, or office found, the Son being of full age: and all this is found by office, and the Son continues the livery, the four younger Sons being still in life. In this Case, albeit by the death of the father before livery sued, the King hath lost the priviledge of having primer seisin after the death of the Grandfather (as it was adjudged in Northcots case, and in Hales case, in the 8 Rep. &c.) for here the Son shall not sue livery, nor pay primer seisin, because they were due by the Father, after the death of the Grandfather: and the Son (living the Father) is not within the Statutes of 32 & 34 H. 8. for the Lands conveyed unto him; Nevertheless, in the same Case, the King shall have primer seisin for the Lands conveyed to the younger Sons, because they are within the three Cases, in which wardship and primer seisin are given unto the King, by the said Acts, viz. Advancement of his wife, preferment of his children, and payment of his debts: And the reason hereof is, because when the said Acts give unto the King primer seisin, it is intended of an actual and effectual primer seisin, and not of one which is onely Mathematical and Imaginary: for (as before is said) the King ought always to have a full and compleat effect of the thing, which is due unto him. So also if the King hath title to present by lapse hâc vice, and he present, and his Clerk is admitted and instituted, but dies before induction: In this Case, the King shall present again; for he had not the full and compleat effect of his presentation, as it was resolved by Sir James Dyer & totam Curiam, in Gyles his Case, 18 Eliz. in Co. Rot. Likewise if the King marry a daughter, which he hath in ward, infra annos nubiles, and before the age of consent, the Baron dies, the King shall have the marriage of the Heir again; because the first marriage was not compleat, as it was resolved in Ambrosia Gores case in the 6 Rep. fol. 22. And the King doner in tail before the Statute of West. 2. de donis, &c. was not barred by the alienation of the Donee, post prolem suscitatam, without Assets, albeit there were collateral warranty: Howbeit, in all these Cases a common person shall be barred, &c.

Marriage again.

King doner not barred.

Co. l. 1. c. 113. b. 1. in *Legats* Case

59 When the King grants any thing upon a false insinuation, or suggestion such a grant of the Kings is void; for in that Case there is a diversity between the King & a common person: For a Subject, that may intend his private affairs, shall not in such Case avoid his Grant: but the King, who intends the Publique good, shall avoid his Jure Regio as it was said in 21 E. 3. 47. in the Earl of Kents Case. And this is an high and great Prerogative, which the King hath; that when he makes any Grant upon such false suggestions, those Grants are void in Law: So also when upon false insinuations and pretexts he makes any grant, as of a Monopoly, &c. which in truth is in the prejudice of the King and Common-wealth, the King (Jure Regio) shall avoid such Grants, and such Letters Patents shall be by judgment of Law cancelled: And therefore in Legats Case, in the 10 Rep. it is wittily said of Perpetuities, Monopolies, and Patents of concealment, that they were borne under an unfortunate Constellation; because as soon as they were drawn in question, Judgment was always given against them, and never for them; they having always two

Grant upon false suggestions void.

Monopoly.

Concealments.

Perpetuities.

two inſeparable qualities inſtant unto them, viz. to be troubleſome and ſtrikiſh.

60 If rent be payable at the Feaſt of Eaſter, and the tenant pay the rent in the morning, and the Bailie die before noon this payment is voluntary, and gives ſatisfaction againſt the Heir, but not againſt the King, 44 E. 3. 3. Co. l. 10, f. 74. b. 4. in *Chuſe's* Caſe.

61 When the King hath any Prerogative, Eſtate, Right, Title, or Intereſt, by the general words of an Act of Parliament, he ſhall not be barred of them, as in caſe of reaſonable aid, the King hath an Eſtate and Intereſt in it, and therefore the general words of the Statute of Weſt. 1. cap. 35. ſhall not extend unto it: Alſo the King hath a Prerogative, quod nullum tempus occurrit Regi, and therefore the general Act of Limitations, or of Plenarty ſhall not extend unto him: Likewiſe the King by his Prerogative may ſue in what Court he will, and of that Prerogative he is not barred by the general purview of the Statute of Magna Charta, cap. 11. Et ſic de ſimilibus. King not ed by Acts arliament Co. l. 10. 74. b. 4. in *Magd.* Coll. Caſe. F. N. B. 7. b. & 32. c.

62 None can make a Park, Chaſe, or Warren, without the Kings licence, becauſe that were quodam modo to appropriate ſuch things as are feræ naturæ, & in nullius bonis, to himſelf, and to reſtrain them of their natural liberty, which he cannot do without the Kings licence, &c. ...ch. ...ence. Co. l. 11. 87. b. 1. in the Caſe of Monopolies

63 The Earl of Devonſhire, being Maſter of the Ordnance, obtained a Privie Seal to convert to his own uſe, &c. All the unſerviceable Ordnance appertaining to the King was informed, that the Maſters did uſe to claim and enjoy them, as fees and avails belonging to their Office; whereupon he ſold them, made his executors, and died: And in this Caſe it was reſolved, that albeit the Earl claimed them to his own uſe, yet in regard the grant was made upon a falſe ſuggeſtion, he was in his life-time accountable to the King for them; becauſe in the Kings Caſe the Law makes a privity; for if any take the Kings goods, or enter into his Lands by wrong, the King may charge him in account (33 H. 6. 2. 4 H. 7. 6. 7 H. 7. 10. 19 H. 7. 17. 1 Eliz. 149. Brereton's caſe, and 40 Aſſ. Pl. 75) If goods be devolved to the King, in whoſe hands ſoever they come, the poſſeſſor ſhall be charged in account to the King, and the King ſhall not be put to his Action of Treſpaſſe; for then by the death of the party the King ſhould be without remedy; but the King by his Prerogative may have an Action of account againſt the executors of the party, as appears in Littleton, fol. 28. And the King is not conſtrained to charge the Defendant, as Bailiff or Receiver, as a common perſon ought; but the King may alledge in his Information generally, that he ad computum Domino Regi reddend. tempore mortis ſuæ tenebatur in ſuch ſums of money unto the King, &c. as appears by many preſidents in the Exchequer, and in the Kings Bench; And therefore if the Earl was in his life-time bound to render an account unto the King, his executors ſhall do it after his decaſe, &c. If one by Letters Patents, or by vertue of his Office, hath power to aſſeſſe Fines upon grants or admittances made to Copiholders within ſuch a Manor of the Kings, and he aſſeſſeth little fines for the King, and under-hand takes great ſummes, or other rewards of the Copiholders to his own uſe, in deceit and prejudice of the King: In this caſe he ſhall be chargeable to the King in account for all; for in truth all was due to the King; and if he die, his executors in the Kings Caſe ſhall be chargeable; for it is holden in 39 Aſſ. Pl. 18. that the Officers and Miniſters of the King may advantage him, but can neither do any thing to his diſadvantage. ...ſſors of ...e Kings ...ds, and ...ir execu... &c. ac...untable. Co. l. 11. 90. a. in the Earl of *Devonſhire's* Caſe

Co. l. 11. 90. b. 4. in the Earl of *Devonshires* Case.

64 M. 37. & 38 Eliz. An Information was preferred in the Exchequer against Carey and Dodington, executors of Sir Walter Mildmay, Knight, Chancellor of that Court, to render an account of 1525 l. of the Queens treasure by him converted to his own use, &c. the Defendants plead, that Sir Walter Mildmay non recepit, &c. ad computandum, nec die mortis tenebatur Reginæ in Computo, &c. And the special Verdict was, that the Treasurer and Under-treasurer of the Exchequer made a warrant to four Tellers or two, to pay to Sir Walter Mildmay 100 l. per annum, for his diet, and 40 l. per annum for his Attendance in the Vacation (by reason that by the annexing of the Court of first-fruits and Augmentation the Chancellor was constrained to attend more than other Chancellors had formerly done) And in 2 Eliz. the Queen directs a Privy Seal to the Treasurer, Chamberlains, and Under-treasurer of the Exchequer, commanding them or some of them to pay to such as should be imployed by her, &c. for their labours and expences, at their discretions, according to their merits in as large manner, as any Treasurer, Chamberlains, or Under-treasurer had done before: And in this Case it was resolved, that no Officer nor all of them together can ex officio dispose of the Kings treasure without the Kings warrant, although it be for the honour and profit of the King; because the Kings treasure is the ligament of peace, and the sinews of war, and of so high a nature, that the imbezeling of treasure trove (although not found in the Kings Coffers) was treason: And treasure and other valuable chattels are so necessary and incident to the Crown, that, in the Kings Case, they shall go with the Crown to the successor, and not to executors, as in case of common persons, as appears in 7 H. 4. 43. and 44 E. 3. 42. Neither yet doth every warrant serve for the issuing of the Kings treasure; for it cannot be done by Parol, or by the Privy Signet; but ought to be done under the Great Seal, or Privy Seal: It was also further resolved in this Case, that albeit Sir Walter had thus received the Queens treasure to his own use; yet inasmuch as he received it without lawful warrant (he knowing that it was the Queens treasure) the Law makes privity in the Queens Case; and therefore she might charge him as an Accomptant: And so it was also adjudged in the Exchequer in Jurdens Case, P. 31. Eliz. Rot. 150. Neither yet is it of necessity, that the Kings money or goods should come into the hands of the Testator; for if he were onely a mean or Instrument, whereby the King was put to loss or damage, he shall be charged with so much as he hath so endamaged the King, and shall be compelled at the Kings Suit reddere rationem thereof, which is in nature of an Accompt, for which there is a notable president in M. 30. E. 3. Rot. 6. Porters Case, which see in Co. l. 11. 92. b. in the Earl of Devonshires Case. And therefore it was also resolved in Sir Walter Mildmays Case, that the Queen might either charge the executors of Sir Walter, or those that made such unlawful warrant, at her election: And if they were dead, their executors, &c. for in as much as they were in their life-time chargeable by the Law; in that Case, if they die before judgement against them, without question their executors shall be charged; because where the Testator is by the Law chargeable to satisfie the King for losse or damage done unto him, his death shall not dispence therewith, but that his Executors shall be also chargeable to the King, &c.

None can pose of th Kings trea without h licence.

F.N.B. 5. l.

65 In a Præcipe in Capite the Tenant shall not plead, that the Tenements are not holden of the King, albeit the writ supposeth as much, but he ought to take it by protestation, and to plead

Protestati

plead other matter in barre, if he have any matter to plead.

der Di. k.

66 In a writ of Right, the Demandant ought to count of his own ſeiſin, or the ſeiſin of his Anceſtor, &c. yet the ſeiſin is not traverſable; but the tenant may tender a Di. mark, to enquire of that ſeiſin, &c. and if it be found with the tenant, that the Anceſtor was not ſeiſed, the Demandant ſhall be barred: Howbeit, if the King be party Demandant, the Tenant ſhall not tender a Demy Mark to enquire of the ſeiſin; but he ought to plead in bar; and there the tenant ſhall not imparl without the aſſent of the Kings ſervants. F.N.B. 5. m.

e King may uſe appearance.

67 The King by a writ de warrantia diei may command the Juſtices to excuſe the Defendant of appearing at the day, whereunto he was adjourned to appear in proper perſon; And whether the Cauſe alledged in the writ be true or falſe, it is not material, when the King certifies, that he is in his ſervice; for it ſeems by the words of the writ, that the King by his Prerogative may warrant that default for a day: And ſo alſo it ſeemes that if the tenant in a Præcipe quod reddat at the great Cape or petit Cape returned, make default, that before judgment upon that default the King may command ſuch a writ to the Juſtices rehearſing, that the tenant was in his ſervice, &c. and commanding them that his default ſhould not turn to his prejudice: And it ſtands with reaſon, that the King may do it; becauſe every one is bound to ſerve the King in his affairs, &c. F.N.B. 17. b.

Omnipreſence in his Courts.

68 If falſe Judgment be given for the King in any Action or Suit, the party grieved ſhall have a writ of Error, and aſſign Errours without ſuing any Scire facias againſt the King ad audiend. errores, becauſe the King is alwayes preſent in Court, and that is the cauſe, that the form of Entry in all Suits for the King, is Edvardus Herbert Miles Attornatus Domini Regis generalis, qui pro domino Rege ſequitur, venit hic in Curia, &c. And doth not ſay, Dominus Rex per Edvardum Herbert Attornatum ſuum, &c. And therefore it is alſo, that the King cannot be Non-ſuit; that all Acts of Parliaments that concern him, are generall, and the Court muſt take notice of them, without pleading them; for he is in all, and all have their part in him, &c. F.N.B. 21. h. & 107. q. & Finch 81.

Make Attorneys.

69 It ſeems, that before the Statutes, which ordain, that a man may make Attorneys, &c. the Juſtices neither would nor could ſuffer the Plaintiffe or Defendant, Demandant or tenant, to make Attorneys in any Action or Court whatſoever; yet the King by his Prerogative (even before thoſe Statutes) might grant to a man power to make Attorneys, and by his Writs or Letters might command the Judges to admit and receive them, &c. and that without any cauſe ſhewen in the writ, &c. F.N.B. 25. c. a. & 26. a.

The King cannot be Joint-tenant.

70 In the Regiſter, there is the form of a writ, wherein a common perſon is joyned with the King in a Quare Impedit, which runs thus, Rex vice comiti, &c. præcipe R. de C. quod juſtè, &c. permittat nos & P. de T. præſentare, &c. But Fitz. ſaith in his N. B. that the common opinion in his time was, that the King ſhould have the whole preſentment ſole, and ſhould have a ſole Action, &c. although he ſeems to hold the contrary himſelf, Ideò quære. F.N.B. 32. g.

ſent again.

71 If the King recover by a Quare Impedit, and after ratifie the Eſtate of the Incumbent, yet at the next avoidance the King ſhall preſent, becauſe the Recovery and Judgement for him were not executed. F.N.B. 34. f.

eſent by ap.

72 In a Free Chappel of the Kings, where the Dean ought to give the Prebends, if he make not collation within ſix moneths un-

to them, then ſhall the King preſent unto them by Laps, as Ordinary.

F.N.B. 34. k. 73 If the Biſhop make collation and die before induction, or inſtalment, and the King ſeiſe the temporalties, he ſhall have that preſentment, becauſe the Church is not full againſt the King, until the Parſon or Prebend be inducted or inſtalled. *Not inducted.*

F.N.B. 35. a. 74 If the Kings tenant hath title to preſent to an Advoweſon, which is void, and the ſix moneths paſſe, and after the Kings tenant dies before the Biſhop preſents by laps, and leaves his heir within age, and in ward to the King; In this caſe, the Biſhop ſhall not preſent by laps, but the King ſhall have the preſentment by reaſon of the ward, &c. *Advowſon, Ward, Preſent.*

F.N.B. 35. p. 75 In a Quare Impedit for the King, albeit the Defendant hath a writ to the Biſhop againſt the King, yet the King may ſue a new Quare Impedit againſt the party of the ſame avoidance, and make another title. *Not ſtopt.*

F.N.B. 37. f. 76 The King may ſue a Ne admittas, after the ſix moneths paſt, where he hath a Quare Impedit, or an Aſſiſe de Darrein preſentment depending, becauſe Nullum tempus occurrit Regi; It is otherwiſe in the Caſe of a common perſon; becauſe the Biſhop may then preſent by laps, the title of preſentment being devolved to him, &c. *Ne admittas.*

F.N.B. 38. c. 77 In a Quare Impedit between two ſtrangers, if the title appears to the Court for the King, they award a writ to the Biſhop for the King accordingly. *The Kings title.*

F.N.B. 60. i. 78 Upon grant of a Reverſion, (although it be by fine) the Grantee cannot bring an Action of waſt againſt the tenant before Attornment; but if the King grant a Reverſion by his Letters Patents, the Grantee may have an Action of waſte before Attornment. *Waſt. Attornment.*

F.N.B. 85. a. 79 At the Common Law every man may go out of the Realm for Merchandizing, Peregrination, or other Cauſe whatſoever pleaſed him, without the Kings licence, and he was not to be puniſhed for it: Howbeit, becauſe every man is by Law bound to defend the King and his Realm; therefore the King at his pleaſure may by his Writ (de ſecuritate inveniendâ, quòd ſe non divertat ad partes exteras, ſine licentia Regis) command, that he ſhall not go out of the Realm without his licence, &c. And if he doth it, he may be puniſhed for diſobeying the Kings Command: And it ſeems, that this Commandement may be made by the Kings Writ under the Great Seal, Privy Seal, or Privy Signet: For in this Caſe the Subject is bound to take notice of every Seal the King hath, as well as of the Great Seal: The King may do the like by his Proclamation, in Caſe he cannot be found to have the Writ ſerved upon him, which if he obey not, it is a contempt, for which he ſhall make fine to the King: Note, that by the Statute of 5 R. 2. cap. 2. it was ordained, that none ſhould go out of the Realm without the Kings licence, which continued in force until 4 Jac. and then by the Statute of 4 Jac. cap. 1. that Clauſe of that Statute was repealed: So that at this day it ſeems, that the Subject hath the ſame liberty that he had at the Common Law: yet by the words in the beginning of the writ, which are theſe; Rex A. de B ſalut. &c. Quia datum eſt nobis intelligi, quod tu verſus partes exteras abſque licentia noſtra clàm deſtinas te divertere. It ſeems he cannot go out of the Realm unlicenſed by the King, &c. As Dyer. obſerves 165. p. 6. Ideo quære de hoc. *Ne exeas regn. abſque licentiâ Regis.*

F.N.B. ibid. c.

Dier. 296. 19.

So If

80 If after the King hath granted to one his protection, any man takes his Goods, or enters into his Lands, &c. or beats his Servants, &c. the partie grieved shall have a special writ directed to the Sheriffe to inquire of them, and to certifie it before the King, &c. And it seemes, that the King shall make processe against them by venire facias, as upon an Indictment, and that they shall make fine hereupon. F. N. B. 92. b. c.

81 The King ought of Right to have and defend his Realme as well against the breakings in of the Sea, as against enemies that it be not drowned or wasted, and to provide remedy for it: And also to provide that his subjects, have their passages throughout the Realme by Bridges and fare Wayes; And therefore if the Sea-bankes be broken, or Sewers and Gutters be not scoured that the fresh waters may have their direct Course, the King may and ought to make a Commission to inquire thereof, &c. And to heat and determine those defaults: But now matters, that concerne Sewers; are regulated by direct late Statute, viz. 23 H. 8. 5. & 13 El. 9. &c. F. N. B. 133. a.

82 If a Man holds of the King by Posteriority, and of another man by priority, and after the King grants to the Queen the Seigniory for terme of life, and after the Tenant dies, his heire within age; In this case, the Queen shall have the wardship of the body, having no regard to the Posteriority; Because the Reversion of the Seigniory remaines still in the King: It had been otherwise, if the King had granted it in remainder to another in Fee, for then it seemes, they should not have had the priority, &c. F. N. B. 141. f.

83 If the King grant an Annuity to one for terme of life or yeares, it ought to be expressed in the grant by whose hands he shall receive that Annuity, as to say, by the hands of the Sheriffe of S. or by our Baylife of the Manor of S. and then the Sheriffe or Baylife shall have allowance upon that Patent shewing, if he pay it; And if there be not such words in the grant of the Annuity, then the grant is void; For he cannot sue to the King for it, and no person is bound to pay it unto him, if he be not named and expressed in the Patent, &c. F. N. B. 152. k.

84 If a Man pray in Ayde of the King, and the Ayde is granted, then shall it be awarded, that he shall sue to the King in the Chancery; And the Justices of the Common Pleas shall cease, until a Writ De procedendo in loquela come unto them, &c. And then they may proceed in the Plea, until it go on so farre, that Judgement ought to be given, &c. For the Plaintiffe: And then also the Judges ought not to proceed to Judgement, until another Writ De procedendo ad judicium be brought unto them; And if the King certifie the Justices by his writ, that the Lands are seised into the Kings hands: then also shall they surcease until a writ De procedendo & loquela be sent into them, &c. And if it appeare to the Justices upon Record, that the Tenements are seised into the Kings hands, or if it appeare to the Court by the pleading and shewing of the Parties, that the King hath an Interest in the Land, or shall lose Rent, &c. or services; then the Court ought to cease, until they shall receive a procedendo in loquela from the King, &c. F. N. B. 153. c. f.

85 If

F. N. B. 154. d, e.

85 If the King by his writt certifie the Juſtices, that the Lands are in his cuſtodie by reaſon of the nonage of ſome heire, taken by Inquiſition, and returned into the Chancery, commanding them, that they ſhall not proceed, Rege Inconſulto. In that Caſe, it ſeemes that the Juſtices ought to ceaſe for the preſent: albeit there be no ſuch Office found nor returned: for they are bound to give credit to the Kings certificate, albeit that it be not true, &c. Any in Aſſiſe de Novel diſſeiſin, if the King ſend his writt to the Juſtices that the Defendant holds the Land put in view of the Kings gift for term of life, by the Kings Charter, commanding them not to proceed, Rege Inconſulto here, although the Tenant will not plead this; yet it ſeemes that the Juſtices ought to ceaſe by that writt: So if the King rehearſe in the writt, that the Tenant is in his ſervice in warre beyond Sea, or in Scotland, and that he holds by Charter of the Kings grant for term of life commanding, that they ſhall not proceed, Rege Inconſulto, but to continue the Aſſiſe, untill a certain day; there alſo it ſeems, they ſhall ſurceaſe; Becauſe the Tenant cannot plead it; for if the Eſcheator will ſay, that he ſeiſed the Land into the Kings hand, in an Aſſiſe brought by any perſon, the Court ſhall ſurceaſe for that ſaying, and by force of the Kings Certificate, &c. Juſtices to ceaſe upon Kings Certificat.

F. N. B. 106. c.

86 Men and Women of Religion are to be excuſed from appearing at the Sheriffs turne or at Leets, unleſſe it be for ſome great cauſe; And if they be diſtrained to come unto them, they may have a writt De exoneratione ſectæ, &c. out of the Chancery, to diſcharge themſelves of ſuch ſervice, &c. Men of Religion.

F. N. B. 159. c.

87 If Land deſcend to Coparceners, for which onely one ſuit ought to be done; In this Caſe, if the Land be holden of the King, then all the Coparceners ought to make a ſuit, as well after the partition as before, But if the Land be holden of another Lord, then the eldeſt Siſter or her Feoffee ſhall onely make the ſuit, &c. And if the Lord do diſtraine the other Coparceners for that ſuit, they ſhall have a writt De exoneratione ſectæ, &c. to diſcharge themſelves of it, &c. Suit of Coparceners.

Pl. Co. 76. b. in The Lord *Willoughbies* Caſe.

88 If the King direct his writt Coronatoribus in Com. L. this is to be underſtood (in the Kings Caſe) Coronatoribus de Com. L. for the Kings writs, in ſuch Caſes, will admit a favourable conſtruction, for the fulfilling of the Kings full intent, &c. The Kings Writ.

Finch 81.

89 For the Kings prerogative, ſee Finch 81. &c. and elſwhere throughout his whole Book, under the ſeveral heads, when there is any difference between this Caſe an that of a ſubject.

Finch 83.

90 The King never dieth, but in Law it is ſaid the demiſe of the King, and a gift unto the King without more, trencheth to his Succeſſors. Demiſe. Le Roy.

91 The particular prerogatives due to the King by the Common Law may be (for the moſt part) referred to one of the eight heads hereafter following, notified in the outward margent by their ſeveral and reſpective letters, as followeth,

1 Divine perfection.	A	5 Perpetuity.	F
2 Infiniteneſſe.	B	6 Juſtice.	G
3 Majeſty.	C	7 Truth.	H
4 Soveraignity & power.	D	8 Omniſcience.	I

ror

92 Becauſe every ſubject is by Law in the protection of the King, who therefore is of right bound to defend his ſubjects perſons and Eſtates; and for as much as an Ideot is not able to governe himſelfe or order his Eſtate, The Law of England hath provided the King to be his Tutor to Govern and order both his perſon, and Eſtate; For the Statute of Prærogativa Regis (made in the 17 of E. 2. cap. 9.) was nothing elſe, but a declaration of the Common Law, &c. Co. l. 4. 126. a. 2. in *Beverleys* Caſe.

ent reſerved.

93 It is a Maxime in Law, that the Rent muſt be reſerved to him, from whom the State of the Land moveth, and not to a ſtranger: but ſome do hold, that it is otherwiſe in the Kings Caſe. Co. Inſt. p. 1. 143. b. 4.

pon a joint rchaſe tenement in com-

94 If Lands be given to A. de B. Biſhop of N. and to a ſecular man, to have and to hold to them two and to their heires; In this Caſe, they are joyntenants; For each of them take the Lands in their naturall capacity: But if Lands be given to the King and to a ſubject, to have and to hold to them and to their heires, yet they are Tenants in Common and not Joyntenants; For the King is not ſeiſed in his naturall capacity, but in his Royal and Politique capacity, in Jure Coronæ, which (in reſpect of the Majeſty of his Kings Perſon) cannot ſtand in jointure with the ſeiſin of a ſubject in his naturall capacity: And therefore if there be two joyntenants and the Crowne deſcend to one of them, the joynture is thereby ſevered, and they are become Tenant in Common, &c. Co. ibid. 190. a. 4.

rant in Mort-maine.

95 It appeareth by Littleton ſ. 140. (which my Lord Coke ſaith is a ſecret in Law) that in the Kings licence to grant land to a Corporation there needs not any non obſtante of the Statutes of Mortmaine; for the King ſhall not be intended to be miſ-conuſant of the Law, and when he licenſeth expreſſely to alien to an Abbot, &c. (which is in Mortmaine) he needs not make any non obſtante of the Statutes of Mortmaine; for it is apparent to be granted in Mortmaine, and the King is the head of the Law, and therefore præſumitur Regem habere omnia Jura in ſcrinio pectoris ſui, for the maintenance of his grant to be good according to the Law. Co. ibid. 99. a. 3

ſcent of rage to Fe-ales.

96 When an Earldome or Baronie deſcends to one Daughter or other heire Female, ſhe ſhall ſolely enjoy both the Dignity and Lands, but where it deſcends to more heirs Females then one, the Lands ſhall be divided as amongſt other Coparceners: Howbeit, in that Caſe, the dignity cannot be divided, neither ſhall the Eldeſt have it, as to be a Counteſſe, Baroneſſe, &c. But (in ſuch caſe) the King, who is the Soveraigne of Honor and Dignity may for the uncertainty conferre it upon which of the Daughters he pleaſe; this is to be intended, when the Anceſtor dies ſeiſed of Peerage in Fee-ſimple. Co. ibid. 165. a. 3.

ings in A-on.

97 If the King grant his owne recogniſance, the ſuit ſhall be in the name of the grantee: but if he grant an obligation forfeited for outlawrie, the ſuit ſhall be in the Kings name. Fuit dict. Dier 1. 7. Pl. 4 H. 8.

like.

98 Bruerton, who was attained 28 H. 8. had certaine obligations, which were forfeited to the King, and the King grants them to his Wife, without any words, that it ſhould be lawfull for the grantee to bring Actions thereupon, yet the Feme brings an Information in her owne name for the ſaid obligations; And upon demurrer thereupon it was adjudged, that the Action was well brought, becauſe the King onely may grant a thing in Action. Dier 30. b. 208 28 H. 8.

The Kings cence.

Finch, 81 Ley French edition. Fol. 22.

99 The King may licence things prohibited by Statute, as to coyn money, which is made Felony by the Statute, and before that; it was lawfull for any one to do it, because it is but malum prohibitum, But malum in se, as to lett a Nusance in the high way, the King cannot licence a man to do, but after it is done he may pardon it: Howbeit, if the Statute saith, that his licence shall be void, there the licence shall have a clause of non obstante, viz. shall say, Notwithstanding

2 H. 7. grants 73.

any Statute to the contrary, otherwise it is not good, as the Statute of 23 H. 6. 8. ordaines, that the Kings grant to be Sheriffe of any County longer then a yeare shall be void, notwithstanding that his Patent shall have a Clause of Non obstante, yet with a Clause of Non obstante such

Dier 52. 1. 33 H. 8.

Patent shall be good, but not without that Clause: Howbeit neither without such a Clause nor with it can he dispence with a Statute before it be made; And therefore a licence to carie Bell-mettal out of the Realme, notwithstanding any Statute made or to be made, is not good, if a Statute be made after to prohibit it, for he cannot dispence with an Act of Parliament before it be made: Howbeit he may in things, wherein he hath an inheritance or interest, as to grant to one to be discharged of tayes and subsidies to be granted, this is good.

Knight not bound by Sta.

11 H. 7. 11. b. Finch ibid.

100 Statutes of restraint bind not the King, unlesse they concerne the Common-Wealth, or be of the thing they concerne be specially named, as the Statute of West. 2. of entailes binds the King, because it concernes the whole Com. Wealth; so likewise the Statute of 1 H. 5. cap. 5. That in Indictments addition must be given to the party indicted, bindeth the King, because Indictments are specially named: But if by Statute one be attainted and his Lands forfeit, with a proviso that of such Lands as he was seised to the use of any other, Cesty que use may enter, it bindeth not the King, that Cesty que use should enter upon him, for it is not for the Common Wealth, neither yet is the King named therein.

Non obstan.

Co. l. 4. 35. b. 1. in Bozouns Case.

101 When the King by the Common Law cannot make a grant, there a non obstante of that Common Law will not against the reason of the Common Law make the grant good; but when the King may lawfully by the Common Law make a grant, and the Common Law onely requires, that he be so informed, that he may not be deceived, there a non obstante supplying it, stands with the reason of the Common Law, and shall make the grant of the good; And therefore if the King grant a protection in a Quare Impedit or an Assie with a non obstante of any Law to the contrarie, such grant is void; for by the Common Law a Protection lyeth not in either of those Cases, for the damage that may happen to the Plaintife by such great delay; And therefore in such Case a non obstante shall not availe, where the King by the Common Law cannot grant the thing, as it was Ruled in 39 H. 6. 3. 9.

Advowson.

Dier 226. 35. 6 El.

102 The King by his prerogative may make a Sheriffe without the usuall assembly and Election in the Exchequer.

Qu. Imp.

Dier 288. 54. 12 El.

103 The King may demise a Manor, except the Courts and perquisites, so cannot a Common Person.

Dier 351. 22. 18 El.

104 Some bookes are, that by an usurpation, the King shall be out of possession and put to his writ of right of Advowson, But 35 H. 8. it is there, that the King may gaine possession by presentment and plenartie by 6 moneths, and that against an infant, who is a purchaser. Vide Finch. Tit. Qu. Impedit 151. 8 E. 3. and M. 16. & Trin. 38 E. 3. & Stat. Westm. 2. c. 5.

Hob. 126.

105 In a Quare Impedit, if the title appeare to the Court to be in the King, albeit he be no party to the suite, yet they ought to award a writ to the Bishop in his behalfe. The Chancellor, &c. of Camb. against Walgrave.

106 The

108 The Kings Certificate under his Signet Manual was received as evidence in Chancery without exception, in the Case of the Lord Aubigny against the Lord Clifton. Hob. 213. 31.

82 Likewise the Law giveth greater priviledges to men, then to Women.

Wardship, Body, Father, or Mother.

1 A Tenant of Land holden by Knight-service, hath issue B. a Daughter and his heire apparent, who being married to C. hath issue and dies, A. dies seised, and the Land descends to the issue within age; In this Case the Lord shall have a wardship of the Land, but not the wardship of the body of the heire; for none shall be in ward for his body to any Lord during his fathers life: It is otherwise where the Father dies, living the Mother, when the Land, holden by Knight-service descends to the issue on the part of the Father, because the Law in that Case confides more in, and giveth more respect unto the Father then the Mother, &c. Litt. §. 114. Co. Inst. p. 1. 84. a. 3.

Villein.

2 If a Villein taketh a free woman to Wife, and have issue between them, the issues shall be Villeins; but if a Niefe taketh a Free-man to her Husband, their issue shall be Free. Litt. §. 187.

Serve no witness.

3 In some Cases Women are by Law wholly excluded to beare testimonie, as to prove a man to be a Villein, Mulieres ad probationem status hominis admitti non debent. Fleta l. 2. cap. 44. Fitz. title Villein 32. 36, & 37. Co. Inst. p. 1. 6. b. 4.

83 The Law tendreth the weakneſſe and debility of other persons, as those out of the Realme, in Prison, Femes covert, and other Women also: Likewise Infants, Lunatiques, Ideots, and such as have other imperfections.

Portion.

1 If Copercenors make partition at full age, and un-married, and of sanæ memoriæ, of Lands in Fee-simple, it shall hold good and firme for ever, albeit the values be un-equal: but if it be of Lands intailed, or if any of the Percoeners be of non sanæ memoriæ, it shall bind the parties themselves, but not their issues, unlesse it be equal: Or if any be covert, it shall bind the husband, but not the Wife or her heires: Or if any be within age, it shall not bind the Infant, &c. Howbeit if the Feme covert after she becomes sole, do assent unto the partition it shall bind her for ever: and therefore in that Case the partition is not void but onely voidable: There is the same Law of an Infant, that assents after he attaines his full age, &c. Co. Inst. p. 1. 166. a. 1. Litt. §. 243. 256, &c. Co. ibid. 171. b. 4. & 171. a. 4. & Litt. §. 250.

Remainder.

2 If Tenant in tail make a Feoffment in Fee upon Condition, and dieth, the issue in tail within age doth enter for the Condition broken, he shall be first in as Tenant in Fee-simple: as heire to his Father, and consequently, and instantly he shall be remitted: but if the heire be of full age, he shall not be remitted: because he might have had his Formedon against the Feoffee, and the entry for the Condition is his owne Act, &c. Co. ibid. 202. b. 2.

Discent.

3 A discent shall not take away the entry of an Infant: unlesse (his Mother being privement enceinte) the discent was cast before his birth: for then there was not cause of entry at the time of the discent cast, &c. Litt. §. 402. Co. ibid. 245. b. 4.

Discent.

4 A dying seised shall not take away the entry of a Feme Covert, unlesse the disseisin &c. was made, when she was sole, and of full age, and that she take Husband, before she attaine her full age. Litt. §. 463. Co. ibid. 246. b. 1.

5 If a deſcent be caſt during the life of one that is non compos mentis, albeit he himſelfe cannot enter (becauſe he cannot diſable himſelfe) yet his heire may well enter notwithſtanding ſuch deſcent, &c. Deſcent.

N Litt. §. 405. Co. ibid. 247.

6 A deſcent ſhall not take away the entry of a man in priſon, when the diſſeiſin was made, and the deſcent caſt during the time of his impriſonment, neither yet is he (in that Caſe) inforced by law to make continual claime by his ſervant, or any other by his warrant, or commaundment; For, things done by deputy are ſeldome well done, but every man will be willing to ſee his owne buſineſſe moſt effectually ſpeedily performed: As the reaſon, why in this and the like Caſes a man impriſoned ſhall not be bound, is, for that (by the intendment of Law) he is kept without intelligence of things abroad; and alſo that he hath not liberty to go at large to make entry or claime, or to take Counſel, &c. So likewiſe if a Recovery by default be had againſt a man in priſon, he ſhall avoid it by writ of error: For a man in priſon by proceſſe of Law ought to be kept in ſalva, & arcta cuſtodia, and by the Law ought not to go out, though it be with a keeper and with the leave and ſufferance of the Gaoler: Howbeit impriſonment muſt be Cuſtodia, non pœna; for Carcer ad homines cuſtodiendos, non ad puniendos dari debet, &c. Deſcent.

P Litt. §. 436. Co. ibid. 259. a. 3.

Litt. §. 438.

Co. ibid. 260. a. 3.

7 A man out of the Realme in the Kings ſervice, &c. at the time of a diſſeiſin, and a deſcent caſt, may enter at his returne; becauſe a man out of the Realme (by intendment of Law) cannot have knowledge of the diſſeiſin, &c. Deſcent.

R Litt. §. 439.

8 At the Common Law before the Statute of Non-claime 34 E. 3. cap. 6. or that of making proclamations after a fine, 4 H. 7. cap. 24. one out of the Realme was not barred, albeit he have not claime within a yeare and a day after a fine levied, &c. Non claime. Fine.

Litt. §. 441. Co. ibid. 262. a. 2.

9 If a man have a judgement given againſt him for debt or dameges or be bound in a recognizance, and dieth, his heire within age, or having two daughters, and the one within age, no execution ſhall be ſued of the Lands by Elegit, during the minority: albeit the heire is not ſpecially bound, but charged as Terre-tenant: So alſo againſt an heire within age no execution ſhall be ſued upon a Statute Merchant or Staple, nor upon an obligation or recognizance taken by force of the Statute of 32 H. 8. cap. 6. for it is excepted in the proceſſe againſt the heire: Neither if the heire within age endowe his Mother, ſhall execution be ſued againſt her, during his minority. No execution againſt the heire under age.

I Co. ibid. 290. a. 4.

10 At the Common Law, If a Feme Inheritrix had a Baron, who being under age, had alienated the Femes land in Fee, and died: In this Caſe the Feme or her heire might have entred: which they could not have done (before the Statute of 32 H. 8. cap. 8.) if the Baron had been of full age: for (by the Common Law) the Feme was (in that Caſe) put to her Cuiin vita, and her heire to his Sur cui in vita; becauſe ſuch Feoffment of the Baron did work a diſcontinuance, &c. Feme Inheritrix. Deſcent.

I Litt. §. 594. & 633.

11 If the Huſband within age take a Wife a Feme Tenant in taile generall, and the Huſband make a gift in taile, and dieth within age, in this Caſe, the Wife may enter: or the heire of the Baron (in reſpect of the new reverſion deſcended unto him) may enter; but if the heire enter preſently thereupon his Eſtate vaniſheth, &c. Feme Tenant in taile.

I Co. ibid. 337. a. 1.

12 If Huſband and Wife be both within age, and they by deed intended joyne in a Feoffment, reſerving a Rent, and the Huſband dieth: In this Caſe, the Wife may enter, or have a Dum fuit infra ætatem: But if ſhe were of full age, ſhe ſhall not have a Dum fuit infra ætatem, for the non-age of her Huſband; Albeit they be but one perſon in Law. Baron and Feme.

I Co. ibid. 23.

13 If

ces joynt-nts.

13 If two joyntenants being within age, make enfeoffment in Fée, and one of the Infants dies and the other survives; In this Case, the surviving joynt-tenant may enter: Because the right descends so that they may joyne in a Writ of right, &c. Likewise if there be two joynt-tenants, the one of full age, and the other within age, and both make a Feoffment in Fée, and he of full age dieth, the Infant may enter, or have a Dum fuit infra ætatem, but for the moity onely. Co. bid. 337. b. 1. I

ment.

14 When an Infant makes a feoffment being within age, he may enter either within age, or at any time after full age, and likewise after his death his heire may enter; meliorem enim conditionem facere potest minor deteriorem nequaquam: Also a special heire shall take advantage of the Infancy of the Ancestor, as if tenant in taile of an Acre of the Custome of Borough-English make a feoffment in fée within age: and dieth, the youngest Son shall avoid it: for he is privy in bloud and claimeth by descent from the Infant: So likewise if Tenant in taile to him and the heires Female of his body make a feoffment in Fée and dieth within age, having issuing a Son and a Daughter, the Daughter shall void the feoffment: And so note (by the way) that a cause to enter by reason of the Infancy, is not like to conditions, Warranties, and Estoples, which even descend to the heire at the Common Law. Co. ibid. 337. b. 2, 3. Litt. §. 635. I

ough-En-h.

cial taile.

15 If Tenant in taile enfeoffe his heire apparent, the heire being of full age at the time of the Feoffment, and after the Tenant in taile dies, this is no remitter to the heire: Because it was his folly, that he, being at full age, would take such a feoffment; But such folly cannot be adjudged in the heire; if he had been within age at the time of the feoffment made, in respect of his tender yeares and want of experience. Co. ibid. 350. b. 1. Litt. §. 664. I

dement re-e.

16 If tenant in taile enfeoffe a Feme in Fée, and die, and his issue within age takes the same Feme to Wife, this is a remitter to the Infant within age, and the Feme then hath nothing; Because no folly can be judged in him, being within age at the time of the Espousals; It is otherwise, if such heire were of full age at the time of the Espousals; For then the heire hath nothing but right of his wife, &c. There is the same Law, where the Tenant in taile Enfeoffes his issue (being within age) and the wife of the issue in fée, and dieth; for in this Case also the issue is remitted, &c. Litt. §. 665. I

le. re. mitter.

Co. ibid. 351. b. 4.

17 If a Feme seised of lands in fée take Baron, who aliens the same lands in fée, and the Alienee lets the Lands to the Baron and Feme for life, saving the Reversion to the Lessor and his Heirs: In this Case the Feme is remitted, and is seised of the Lands in her Demesne, as of fée, as she was before; because the reprisal of the Estate shall be adjudged in Law the act of the Baron, and not of the Feme: so that no folly can be adjudged in the Feme, who was covert at the time of making the Lease: And in this Case, the Lessor hath nothing in the Reversion, because the Feme is seised in fée, &c. And here, if the Lessor sue an Action of wast for wast committed by the Baron; albeit the Baron cannot (against his own feofment and reprisal) bar the Lessor, by shewing the remitter to his Feme, &c. yet in such an Action if the Baron make default to the great distresse, and the Feme pray to be received, and is received accordingly, she may well shew the whole matter, and how she is in her remitter, and so shall she bar the Lessor of his Action, &c. for regularly in every Case, where the Feme is received for default of the Baron, she shall in pleading have the same advantage that a Feme sole hath, &c. There is the same Law, if the Alienée had made the Lease by Deed indented, or by Fine, because in taking a thing by Fine, the Feme is never examined, &c. Litt. §. 648. 669. F

F. Co.ib.353.a.2 18 If a Feme covert be received in an Assise, and plead a Record, and fail, she shall not therefore be adjudged a Disseisor, as she should be, if she were sole, &c. So if a Feme covert onely levy a Fine executory, and a Scire facias is brought against her and her husband, if she be received upon the default of the husband, she shall bar the Conusée, which if she had been sole, she could not do, &c. Assise. Disseisor.

F. Co.ib.353.a.3 19 In the acknowledging of a Fine by a Feme covert, least she should be deceived or any way abused, her examination ought to be secret, and to this effect, viz. whether she be content to levy a Fine of such lands (naming them particularly and distinctly, and the state that passeth by the Fine) of her own voluntary free will, and not by threats, menaces, or any other compulsory means. Fine. Examin.

F Litt. §.677. Co.ib.356.b.3 20 If the Baron dis-continue the land of the Feme, and the Discontinuée lets the same land to the Feme for term of her life, and gives her seisin thereof accordingly: In this Case, whether the Baron were out of the Realm, when the Lease was made, or within the Realm, or whether the Baron agrée to the Lease, or no; nevertheless the Feme (in this Case) is remitted: It had been otherwise, if she had been sole at the time of the Lease made, for then she could not have been remitted, &c. Remitter.

I Litt. §.696. Co.ib.364.a.4 21 If two Joint-tenants of lands in fée, the one of full age, the other under age, are disseised, and the disseisor dies seised, and his Issue enters, one of the Joint-tenants being still within age, and after he attains his full age, the heir of the Disseisor lets the Lands to both the Joint-tenants for their lives; this is a remitter (as to the moity) to him, that was within age; because his entry was congeable; But the other hath but an Estate for life in the other moity, because his entry was taken away by the dying seised, &c. for the Infant (being favoured in Law) had right of Entry, whereas the other had onely right of action, &c. Remitter

I Litt. §.725, & 726. Co.ib.380.a.3 22. At the Common Law (before the Statute of 11 H. 7. cap. 20.) if tenant in Dower had alienes the Land in fée with warranty, and that warranty had descended to the Heir, who was to inherit the land in Dower, the Heir had been thereby barred to demand the same land: Howbeit if the Heir were within age at the time of the warranty descended upon him: In that Case, the Heir might enter and avoid the Estate either within age, or at any time after his full age; but if he were within age at the time of the alienation with warranty, and became of full age before the descent of the warranty, the warranty did bar him for ever, &c. Warranty.

Co.l.4.125.a. 4. in Beverley's Case. 23 Albeit Laches of a man non compos mentis may prejudice him for his entry (as if he be disseised, and a discent is cast, in this case he cannot enter) yet it shall not prejudice his right; as if a man non compos mentis were disseised, and the disseisor had levied a Fine, in this Case (at the Common Law) although the year and day had passed, yet he that was non compos mentis, was not bound thereby, but that he might well enter: And this is proved by the Statute de modo levandi Fines, made Anno 18. E. 1. which was nothing else but a Declaration of the Common Law: There is the same Law of an Infant, one in prison, or not within the four Seas, or of a woman not duly examined; for in all these Cases a Fine was not binding at the Common Law, although claim was not made within a year and a day, as appears by the same Statute, &c. There is also the like exception of such persons in the later Statute of Fines, with Proclamations made, 4 H. 7. cap. 24. which proves, that the Law-makers had still a special care to provide for persons that had such defects and imperfections, &c. Fine.

24 In

24 In Caſe of Ideots or fools natural, becauſe (as Bracton ſaith) Non multum diſtant à brutis, qui ratione carent, the Law of England, (as well as the Law Civil) hath provided a Tutor for them, viz. the King, and hath made proviſion for the preſervation both of their Inheritance, and alſo of their goods, as appears by Britton. fol. 18. and likewiſe by Prerogativa Regis, cap. 9. made 17 E. 2. which was nothing elſe but a Declaration of the Common Law: And albeit that Statute onely ſaith, Quod Rex habebit cuſtodiam terrarum fatuorum naturalium, &c. yet the King ſhall have as well the cuſtody of their bodies and goods, as of their lands, and alſo of all other hereditaments, as well thoſe which they have by purchaſe, as others which they have by inheritance at the Common Law, &c. And the reaſon of this is, becauſe (as Fitz. N.B. ſaith, 232.) the King is bound of right by his Laws to defend his Subjects, their Goods and Chattels, Lands and Tenements: And therefore every Subject being by the Law in the Kings protection, an Ideot who cannot defend or govern himſelf, nor order his Eſtate, ought of right to have both his perſon and eſtate protected and ordered by the King, &c. Co. l. 4. 126. a. in *Beverley's* Caſe. N

executor 25 If an Infant be an Executor, a Releaſe or Acquittance made by him, binds him not, unleſſe it be in the due purſuit of his Office of Executorſhip, and for ſo much onely as he really receives. Co. l. 5. 27. b. 2 in *Ruſſel's* caſe. I

executor. 26 An Adminiſtrator (durante minore ætate) cannot ſell any of the goods of the dead, if it be not of neceſſity for the payment of debts, or bona peritura, for he hath his Office of Adminiſtration pro bono & commodo of the Infant, and not for his prejudice; Alſo ſuch an Adminiſtrator cannot aſſent to any legacy, unleſſe there be Aſſets to pay debts, &c. and generally, he can do nothing to the prejudice of the Infant; for the words of the letters of Adminiſtration are, Adminiſtrationem omnium & ſingulorum bonorum ad opus, commodum, & utilitatem executoris durante ſua minore ætate, & non aliter, nec alio modo committimus, &c. Co. l. 5. 29. b. 3. in *Princes* caſe I

27. Generally in all Actions real, which the Infant brings of his own poſſeſſion; albeit he hath the land by deſcent, and that the tenant pleads the deed or warranty of his Anceſtor, the parol ſhall not ſtay for his non-age: For by preſumption of Law, the granting of delay is in favour, and for the benefit of the Infant, leſt by default of good underſtanding of his eſtate, and of the truth of the matter, he might be prejudiced of his right, which deſcends unto him from his Anceſtor; And therefore, in ſuch caſe the Law will rather ſuffer a delay, then hazard the right of the land, the poſſeſſion whereof his Anceſtor hath by negligence, or otherwiſe loſt: But when the Anceſtor dies ſeiſed, and the land doth deſcend unto the Infant, and he enters and takes the Expleas and profits; In this Caſe, it will be a prejudice to the Infant, if he ſhould loſe the poſſeſſion which he has, and ſhall be thereof delayed, until his full age: It is otherwiſe, when onely a naked right deſcends unto him, for then he can ſuffer no ſuch prejudice, but rather may run a hazard, &c. And with this agrees 12 E. 4. 17. in a writ of Entry ſur diſſeiſin, of a diſſeiſin made to the Infant himſelf: And 41 E. 3. tit. Age 39 in a Writ of Right of a deſcendement done to the Infant himſelf of land, which he has by deſcent: So likewiſe in Eſcheat and Ceſſavit, and a writ of Right ſur diſclaimer brought by an Infant, becauſe he hath the Seigniory in poſſeſſion, which by Eſcheat, Ceſſar, or Diſclaimer he might loſe: and in that Caſe alſo his Anceſtor had no right to the land, and therefore the Parol ſhall not ſtay for his non-age: In like manner in a writ of Meſne brought by an Infant, becauſe the cauſe of Action, and the wrong begins in the time of the Infant himſelf, the Parol Co. l. 6. 3. b. 1. in *Merifield's* Caſe. I

Parol ſhall not ſtay, &c. 21 E.3.Age 85. Temp. E. 1: Age 119. 7 E. 2. Age 140. Alſo in a Formedon in remainder, albeit the Infant demands Fee-ſimple, yet becauſe his Anceſtor, whoſe Heir he is, was never in ſeiſin, nor took explees, (and therefore in ſuch Caſe he ſhall allege explees onely, in the particular tenant, who had the eſtate upon which the remainer depended) for this cauſe the tenant (without plee) cannot pray, that the Parol may ſtay, in as much as the remainder was never in the poſſeſſion of any of his Anceſtors, and the Demandant himſelf is the firſt, in whom it will veſt, and that ſhall have ſeiſin of the land in demand, &c. It is otherwiſe in a Form. in reverter, cauſa qua ſuprà.

I Co.l.6.8.b.1: in *Ferrers* caſe

28 At the Common Law before the Statute of Weſt. 2.cap.4. if one had ſuffered a recovery in any real Action againſt him by default (if he were lawfully ſummoned, and that there were no errour in the proceeding) he had not any remedy but by writ of Right: Howbeit the Law was otherwiſe in caſe of an Infant; for he was therein excuſed by reaſon of his tenderneſſe of age, and want of underſtanding. Recovery by default.

I Co.l.7.7.b.4. in the Earl of *Bedfords* caſe.

29 When a Subject is Guardian in Chivalry, he in the right of the heir within age, and in his Ward, ſhall avoid voidable Leaſes, for ſo long time as he hath intereſt in the Lands, by reaſon of the Wardſhip: but this ſhall not prejudice the Heir of his election, to make the Leaſes good by acceptance of the Rent, &c. when he ſhall attain his full age. For, Cuſtos ſtatum hæredis in cuſtodia ſua exiſtentis meliorem non deteriorem facere poteſt: The Law is alſo the ſame, when the King is Guardian, &c. Voidable Leaſes.

I Co.l.8.61.b.4. in *Beechers* ca.

30 Infants ſhall not be amerced, and conſequently ſhall not finde pledges, by reaſon of the weakneſſe of their age: And therefore (in that Caſe) the entry is, Ideo in miſerecordia, ſed perdonatur quia Infans. Vide 43 Aſſ. Pl. 45. 44 E. 3. tit. Amerc. 10. 3 E.3 Enfant 14. 14 Aſſ. Pl. 17. 41 Aſſ. Pl. 14. 17 E. 3. 75. Bracton. fol. 254. F. N. B. 195 h. Amerc. Pledges.

Co.l.8.99.b.4. in Sir *Richard Letchfords* caſ.

31 A Cuſtome (that the Lord ſhall ſeiſe Copiholds after three Proclamations at three Courts, and non-claim by the heir, &c.) ſhall not binde the Heir, that is, beyond Sea (extra Maria) at the time of the Proclamations made; ſo it is alſo of an Infant, non compos mentis, or one in priſon; becauſe (in judgment of Law) they are not bound to make claim, neither yet (by intendment) can they have notice thereof; for, if theſe four perſons were excuſed (by the Common Law) though they made not claim within a year and a day after a Fine levied, or a Recovery in a writ of Right (being matters of record, and of extraordinary high eſteem) in the Law) ſo that they were not barred of their right, notwithſtanding their non-claim: A Fortiori, ſhall not Proclamations made in a baſe Court, and in a private corner be any bar unto them, &c. Vide 5 E. 3.222. and 7 E.3.335. Alſo, if in a real Action a Recovery by default be had againſt a man in priſon, it ſhall not binde him, but he may reverſe it by writ of Errour, as appears 5 E.3.50.b. 4 E.2. Diſceit 51. Littleton 102.b. Copiholds. Proclamation. Non-claim

I Co.l.9.76.b.1. in *Combes* caſe

32 Where the cuſtome is, that an Infant at the age of 15. may make a feoffment, he cannot do it by Attorney, becauſe the Cuſtome that inables any perſon diſabled by the Law, ought to be purſued, and an Infant cannot make any thing to paſſe out of him by Attorney, Vide 11 H.4.33. Cuſtome. Feoffment Age 15.

I Co.l.9.85.a.1. in *Conys* caſe.

33 Albeit the tenant of a Manor that is within age, may be diſtrained for rent arrear, and neither in that Caſe, nor in a per quæ ſervitia brought againſt him (when the tenancy deſcends) ſhall have his age; Diſtrain per quæ ſervic.

age, because at first the Lord departed with the land in consideration that the tenant should hold of him, pay his rent, do his services, &c. And although upon grant of the Wardship by Fine, he may be compelled to Attorn at such a writ; and if he Attorn upon grant thereof in pais, the Attornment is good: yet in a writ of Customes and Services, (which is a writ of Right in his nature, and in which Judgement final shall be given against an Infant that is in by descent, he shall have his age, although it be upon his own Cesser, because he knoweth not what arrerages to tender before Judgement, and that is a writ of right in his nature, and if he make not true tender, he shall lose the land.) And so it was adjudged in 28 E. 3. pla. Vide 9 Eliz. 250. 14 E. 3. Age 88. 31 E. 3. Age 54. 2 E. 2. Age 132. And albeit such an Infant do attorn in a Per quæ servitia, that can be no mischief unto him; for notwithstanding his Attornment within age, he may at his full age disclaim to hold of him, or may say, that he holds not of him, or may acknowledge he holds of him, but by Fealty or other services. And to this seems to accord 26 E. 3. 63. 32 E. 3. Per quæ servitia, 9. and Age 33. Vide 2 E. 2. Age 77 & 78. 37 H. 8. Attornment Br.

Writ of Customs & Serv.

Attornment.

34 In a Quid Juris clamat brought by an Infant, the tenant saith, that he holds the land for term of life of a Rent of the Infants Ancestor, who grants that he should not be impeached of waste by deed, which he shews forth to the Court: And in this Case, because the Plaintiff was within age, and so could not acknowledge the deed, during his non-age, it was adjudged that he should say until his full age. Nevertheless, in this Case, if when the Infant attains his full age, the Defendant attorn by judgement of Court, this shall not any way trench to the Infants prejudice. For albeit the Attornment were after his full age, yet in as much as there was no Laches in the Infant, but that he brought his writ de quid juris clamat to force the tenant to attorn the day, which was till his full age (which the Law provides for his benefit) shall not turn to his prejudice: And therefore by judgement of Law, (which doth worke to none) he shall have as much advantage as well for the arrerages of rent, as for waste done, as if the Tenant had Attorned at the time of the Writ purchased.

Quid Juris clamat.

Waste.

43 E. 3. fol. 5. & 32. E. 3. cited *per Coke*, Ch. Justice, 9 Co. 85 b. 2. in *Corbets* Case. I

Parol Demur. No prejudice.

35 There was a Clause annexed to an Estate tail settled by will to a Feme sole, that if she should apparently and willingly conclude and agree to discontinue the Estate, &c. that then the land should from thenceforth remain to another, &c. the Feme takes husband, and they two conclude and agree with J. S. to suffer a recovery of the Lands, with intention to make void the Estate, and thereupon a common recovery was suffered accordingly, &c. And in this Case Coke Chief Justice was of opinion, that such conclusion of a Feme covert was of no force: neither yet could be any cause of forfeiture: for no Feme covert shall be barred (by her confession) of her inheritance or frank-tenement; but when she is examined by the course of Law (15 E. 4. 8. 44 E. 3. 28. Vide 14 E. 4, 5.) And none hath power to examine a Feme covert without writ (Vide 21 E. 3. 43. John de Holborns Case.) And this is the cause, that if Baron and Feme acknowledge a Statute or Recognizance, this is void, as to the Feme, albeit she intends her Baron, as it was holden P. 17 Eliz. in the Countesse of Lennox Case: So if Baron and Feme acknowledge a Deed to be enrolled, and it is enrolled accordingly, this also is void, as to the Feme, (Vide 29 H. 8. Fairs enroll. Br. 14. and 9 E. 4, 5. 16 H. 7. 5. and 21 E. 3. 43.) And the reason is, because no such writ is depending against the Baron and Feme, upon which the Feme may by the Law be examined: But if an Infant acknowledge a Statute

Co. l. 10. 42. b. 4. in *Mary Portingtons* Case, *per Coke* Ch. Justice. F

Seisie. Fail. Conclusion.

Feme covert cannot passe nothing without examination of writ.

F.N.B. 104. E.

or Recognisance, is not void, but voidable by Audita querela, during his non-age: And the cause of the diversity is, for that the Iudge (in case of an Infant) may by inspection know his age, but not know whether a woman be covert or no. And the use is always upon a common Recovery against Baron and Feme to examine the Feme, and to grant a Dedimus potestatem to take (upon examination) her Consulance, as in Case of a Fine; for in that Case also there is a writ, upon which she may be examined, Vide 44 E. 3. 28. Howbeit a common Recovery against an Infant, although he appear by Guardian, shall not binde him; for an Infant hath not such a disposing power upon the Land, as Baron and Feme have, but is utterly disabled by Law to convey or transferre his Inheritance or Frank-tenement to others, during his minority: And at this day a common Recovery appeares to be a Common Conveyance or Assurance of Lands, &c. Statute. Recogniza

I Common Recovery.

I Co. l. 11. 77. a. 4. in *Magd.* Coll. Case. 36 If an Infant hath conveyed lands to Queen Eliz. by deed inrolled that grant hath not been established by the Act of 18 El. cap. 2. (which was made for the confirmation of grants made to the Queen from pri- ded to that time, &c. because the person of the Infant during his mi- nority was absolutely disabled to make any conveyance at all by the Common Law: So likewise if an infant hath levied a fine to Queen Eliz. and afterwards the said Act was made; yet the infant notwithstanding the Statute, might have reversed such fine by writ of Error: And so it was resolved M. 32, & 33 El. in B. R. per Wray Chief Iust. & totam Curiam in Vaughans Case; There is the same Law, if Baron and Feme had made a grant of the Land of the Feme to the Queen, for neither hath this been made good by the said Act to have bound the feme (after the Coverture) or her heires: Because the person of the feme covert is disabled to convey her Land, unless it be by fine upon due examination, and so also was it holden in the aforesaid Case of Vaughan. 18 El. cap. 2. Grant al Fine.

F Co. lib. 78. a. 3. Baron, Feme.

I F.N.B. 34. z. 37 If an infant hath a Manor by descent, unto which an Advowson is appendant; and suffers an usurpation to the Advowson, when the Church happens to be void, and after grants the Manor in fee at his full age, and after that the Advowson happens to be void again; In this Case, the infant shall present, and not the feoffee: for the Advowson was severed by the usurpation, and yet the infant may present. Advowse, Usurpation.

F F.N.B. 59. i. *Finch*, 26. 38 If a Lease be made to Baron and Feme for life or yeares, the Feme shall not be punished for wast done by the Baron, after the Barons death. Waste.

I F.N.B. 110. d. 39 A man may have a Writ of account against a Feme, as receptrix denariorum, or against a Chaplain: But a man shall not have a Writ of Accompt against an infant. Accompt.

F F.N.B. 161. a. b 40 Women shall not be compelled nor distrained to come to ye Sheriffs tourne, or to Leets, and if they be distrained, they may sue the writ de exoneratione sectæ, &c. to excuse themselves of that service, and thereupon they may also have alias plura and attachment, &c. And so far as much as Femes shall not be sworn in Leets to the King, as men of the age of twelve yeares or upwards shall be, when a Woman is out-lawed she is said to be waived and not out-lawed; for she was never put nor sworne to the Law, but a man is said to be out-lawed, because he is, or ought to be sworne to the Law, and then for contumacy he is put out of the Law, and so is said to be ut lagatus, quasi extra legem positus: And by the Rule of the Register two Women may joyne in such a writ, &c. Femes non jure in Leets Dic. Wayve.

41 If

Felonie.

41 If an infant of tender age (viz. under the yeares of diſcretion) kill a man, that is not felony in him: becauſe he wanted diſcretion and underſtanding: and therefore the Law imputes it to his ignorance, which he hath at that age by nature, and ſo no default in him; and therefore it is called, Involuntary ignorance: For he cannot be wiſe and diſcreet, though he would, but is ignorant by compulſion, and therefore ſhall be excuſed: And ſuch an Act is properly ſaid to be ex ignorantia, where involuntary ignorance is adjudged to be the cauſe thereof: So if a man de non ſanæ memoriæ kill another, albeit he hath broken the words of the Law, yet he hath not broken the Law: becauſe he hath not any memory, or underſtanding, but mere ignorance, which falls upon him by the hand of God: and therefore the Law imputes it to involuntary ignorance and not to him, ſo that he ſhall be excuſed for the doing of it, &c. Pl. Co. 19. a. 2. in *Fogaſſes* Caſe.

Felonie.

Stat. 11 H. 8. cap. 20.

42 The makers of the Statute of 11 H. 8. 20. in conſideration of the frailty and inconſtancy of Women, ordained that Law to reſtraine them from the alienation of the Lands of their deceaſed Husbands: and becauſe they did conceive that they might (by flattering words) be eaſily beleived and inticed to covin, therefore they ordained in that Act a penalty againſt them, as a bridle of their inconſtancy, to prevent them from being (in that manner) ſeduced, &c. Pl. Co. 50. b. 51. in *Winbiſh* and *Talbois* Caſe *per Males.*

Dower beſt poſſeſſion.

43 A Woman ſhall be endowed of the beſt poſſeſſion of her Husband, as if the Husband holds of Jo. S. per iij. d. who held over of another by xx. d. and Jo. S. releaſe to the Husband (ſo as now the Husband holds by xx. d.) the wife being endowed of this land, ſhall hold only by the third part of iij. d. and not of xx. d. Finch 26.

Dumbe.

44 If a dumbe perſon bring an Action he ſhall plead by prochiene amy. Finch ibid.

Tender upon a Morgage for an Ideot.

45 In Caſe of a Mortage (Litt. ſaith S. 334.) if a ſtranger of his owne head, that, hath no Intereſt, &c. will tender the moneys, &c. to the feoffée at the day appointed, the feoffée is not bound to receive them, &c. yet if the tender ought to be made by an heire, that is and Ideot, of what age ſoever, In that Caſe any man may make the tender for him, in reſpect of his abſolute diſ-ability, and the Law in this Caſe is grounded upon charity and ſo in like Caſes. Co. Inſt. p. 2. 206. b. 4.

Infant not outlawed.

45 Minor verò, & qui infra ætatem 12 annorum fuerit, utlagari non poteſt, nec extra Legem poni, quia ante talem ætatem non eſt ſub lege aliqua nec in decemi. Bracton l. 3. fol. 125. r.

Infant no accomptant, nor can make it.

46 An infant under the age of 12 yeares ſhall not be charged in account as Receiver or Bailiffe, becauſe (by intendment of Law) before his full age he hath not skill and ability to raiſe or make any improvement or profit of the lands, Goods, or Chattels committed to his charge, Neither ſhall an infant under that age be ſworne of an Inqueſt; for the Rule of Law is, Minor jurare non poteſt, And therefore an infant, cannot make his Law of non ſummons, neither ſhall his default in ſuch Caſe grieve him: for ſeeing the mean to excuſe the default is taken away by Law; the default it ſelf ſhall not prejudice him: Howbeit, an Infant at the age of 12 yeares ſhall take the oath of Allegiance to the King, as this was (as Bracton ſaith) Secundum leges Sancti Edwardi, but indeed ſuch was the Law in the time of King Arthur. Howbeit, an Infant cannot wage his Law in an Action of debt, no more then make oath of non ſummons, as afore-ſaid. Co. ibid. 128. Co. Inſt. p. 1. 172. a. 3. Litt. §. 258. Co. ib. 172. b. 3.

Priſonment acted.

47 In Treſpaſs by Will. de Walton againſt John Martin judgement was given, that the Parliament ſhould recover damages, & quod prædict. Joannes capiatur. And the Record ſaith, quod prædict Joannes venit coram Domino Rege & reddidit ſe priſonæ, & quia conſtat Curiæ per inſpe- Co. Inſt. p. 2. 289. a. 4.

inspectionem corporis ipsius Joannis, quod idem Joannes est talis ætatis quod pœnam imprisonamenti subire non potest, idem dictum est ei, quod eat sine die. Also Allen Abbot brought an appeals of Robbery against John Boskisetto Clerk and others, who pleaded Not guilty, and were thereof found guilty; whereupon judgement was given, that they should purgate, & prædict Elena pro falso appello suo committatur prisonæ, &c. (for by the statute of Westm. 2. cap. 12. she ought to be imprisoned in that case for a year) but the Record saith, Quia eadem Elena pregnans fuit, & in periculo mortis; ipsa dimittitur per manucaptionem, &c. ad habendum corpus ubique Quind. Mich. &c.

Vide Max. 115. 1. and for Infants see Dier 104. a. 10, &c. and Max. 149. 55. Dier 244. 75. & 338. 48.

Hob. 137. A Bastardus shall not be charged with mesne rates for default of Livery, sued or tendered. Burchers Case.

84 The Law (in some Cases) tendreth the ignorance of men un-lettered.

7 E. 3. 9. Co. Inst. p. 1. 301. b. 4. 1 If a man make a lease to A. for years, and after by his deed the Lessor voluit, quòd haberet & teneret terram pro termino vitæ suæ, this is expounded by this word (volo) to be a new confirmation for term of his life; Benignæ enim faciendæ sunt interpretationes cartarum propter simplicitatem Laicorum, ut res magis valeat quàm pereat. Co. lib. 5. 55. b. 2. in Knights Case. Lease for life.

Co. lib. 2. 3. a. Mahsis Case. Dier T. 16. El. 327. n. 80. Pl. 39. 2 A man not lettered is not bound to seale and deliver any writing which shall be tendred unto him; if there be not some present, that can and do first read the deed unto him; if he require them so to do; and if the deed be in Latin, French, or any other Language) which he knows, that should seale the writing, understandeth not (in that case if the partie will or desire one to read it unto him) and there is none present, that can or will do it in any language, that the party seeling (with understanding he may well) thereof refuseth to deliver it: So if the deed, albeit a man can read, yet if the deed be written in Latin, French, or some other language, that he understand not, and he command to have it expounded, but can not have it done accordingly: In that Case also he may refuse to deliver it: For, Ignorantia est duplex, viz. facti & juris, & rursum ignorantia facti (quoad rem nostram attinet) est duplex, viz. Legationis & linguæ: Now ignorance in reading or of the language, quæ sunt ignorantiæ facti, may excuse: but as it is commonly said, ignorantia Juris non excusat. Not bound to seale a deed unlesse read.

Co. lib. 2. 9. a. Thoroughgoods Case. 3 A writing read or expounded in another former then it purports, to one not lettered, is not his deed, though he seal and deliver it. Not bound.

Co. l. 4. 44. b. 3. in Sanches Case. 4 An Indictment ought to be full expresse and certaine, and shall not be maintained by argument or implication: because it is to be found by the oath of Lay-men. Indictment.

Co. l. 9 51. b. in the Earle of Shrewsburys Case. 5 Pleading ought to be precise, exact, and certain: It is other-wise of speciall verdicts, which are to be found by Lay-men: for the Law requireth no such precisenesse in them, etc. In the Earle of Shrewsburys Case. Special Verdicts.

Co. lib. 11. 27. b. 1. in Henry Pigots Case. 6 If three distinct obligations are written upon one and the same piece of parchement, and one of them only is read to the obligor, and he being a man not lettered, seales and delivers the whole, this is good for that obligation, which was read, but void for the rest: And this Case is agreed by Brudnel and Pollard, in 14 H. 8. 26. So if there be two absolute and distinct clauses in a deed, and one of them is read to the partie not Several Obligations upon one parchment.

not lettered, and the other not, it is good for the clause that was read, and ab initio void for the other.

Obligation of x. l. &c. xx. l.

7 In 9 H. 5. fol. 15. One brings a writ of debt of xx l. against another and counts upon an obligation of the same summe, the defendant pleads that he was a Lay-man, and knew not letters, and he acknowledged himselfe to be bound to the Plaintife by the said deed in 20. shillings, which he hath paid, and thereof sheweth an acquitance, and as to the residue of the summe in the said Obligation, nient son fait: And in this Case, for as much as the deed consisted upon an intire summe, it was adjudged void for all: The same is also agreed in 14 H. 8. 26. & 30 E. 3. 31. Co. ibidem.

Fee taile read for fee-simple.

8 In 30 E. 3. casu ultimo in an Assise before Sheriffe and others in pais, the Tenant pleads feoffement of the Plaintife to him by deed of the Land in plea, to have and hold to him and his heires, comprehending a letter of Attorney to deliver seisin, &c. And in truth the Plaintife was a Lay-man, ignorant of Letters, and the deed with the letter of Attorney was read unto him according to the forme of an Estate taile, and for the same intent he sealed and delivered the deed with the letter of Attorney in it to deliver seisin; And in this Case, the feoffment was adjudged void, and the letter of Attorney also (albeit it were truly read) because it depended upon the feoffment, and had relation to the Estate in fee: And there Thorpe Justice said, that every deed ought to have writing, sealing and delivery: and when any thing passed, from such as have no understanding but by hearing onely, there ought also to be reading added to the other three: And (indeed) he that is not lettered is reputed in Law as one, that cannot see but onely hears, and all his understanding is by hearing: So likewise a man, that is learned, but cannot see, (as to purpose) taken in Law as a man not lettered; And therefore if a man be learned, but blind, if the deed be read unto him in another manner, &c. he shall avoid the deed: because all his understanding in such Case is by his hearing, as it was resolved in Shuters Case, in the Starre-chamber, M. 9 Jac. who was a man of 115 yeares of age at the time of his death. Vide John Pinchons Case in 37 E. 3. 3. cited in Cooke ubi supra. Vide 63. 35. Co. lib. 11. 27. b. 3. in *Henr. Pigots* Case.

Incidents to a deed.

Ibid.

85 The Law favoureth Strangers, that are neither parties nor privies.

Lord, Tenant, Feoffment upon Condition.

1 Lord and Tenant, and the Tenant maketh a feoffment in Fee upon Condition, the Feoffor dyeth, after his death the Condition is broken, and the Heire within age entreth, for the Condition broken; In this Case, albeit the Feoffor had no Estate or right in the Land at the time of his death, but onely a Condition, and which was broken after his decease, yet the Heire shall be in ward, for the Lord was neither partie nor privy to the Conditional feoffment, and therefore there could be no default in the Lord to barre him of his wardship. Co. Inst. p. 1. 76. b. 1.

Manor, Condition, Advowson, Appendant.

2 A man seised of Land, whereunto Condition is appendant, is disseised; In this Case, the disseisee cannot use the Condition, until he entreth into the Land, whereunto it is appendant: But if a man be disseised of a Mannor, whereunto an advowson is appendant, he may present unto the Advowson, before he enters into the Mannor: And the reason of this diversity is, because in the Case of the Condition it should be a prejudice to the Tenant of the soile; for if the disseisee might put in his cattle, the disseisor might do so too, which would be a double charge to the Tenant: It is otherwise of an Advowson, &c. Co. ibid. 122. b. 1.

Co. ibid. 132 b 2.

3 Profeſſion or entring into Religion is a Civil death, ſo that his heire ſhall inherit; howbeit, this ſhall work no prejudice or wrong to a ſtranger, that hath a former right: And therefore if the diſſeiſor entreth into Religion, and is profeſſed, ſo as the Land deſcends to his heire, yet this reſtreint ſhall not tell the entry of the diſſeiſee, &c.

Profeſſion Telleth not entry.

Co. ibid. 148 b. 3

4 If there be Lord and Tenant of 40 acres of Land by fealty and 20 ſhillings Rent, if the Tenant maketh a gift in tail, or a leaſe for life or yeares of parcel thereof to the Lord; in this Caſe the Rent ſhall not be apportioned in any part, but the rent ſhall be ſuſpended for the whole: for a Rent-ſervice (ſaith Litt. §. 222) may be extinct for part, and apportioned for the reſt, but (regularly) it cannot be ſuſpended in part by the Act of the partie, and in eſſe for another part; ſo it is alſo, if the Leſſor enter upon the Leſſee for life or yeares into part, and thereof diſſeiſe or put out the Leſſee, the Rent is ſuſpended in the whole; Neverthelеſſe, a Seigniory may be ſuſpended in part by the Act of a ſtranger: As if two joynt-tenants or coparceners be of a Seigniory, and one of them diſſeiſe the Tenant of the Land, the other joynt-tenant or coparcener ſhall diſtraine for his or her moity; for it is no reaſon, that they (being ſtrangers) ſhould ſuffer any prejudice by the Act of another, &c.

Rent ſuſpended in all.

In part.

Litt. §. 222 Co. ibid. 149 b. 4

5 If a man hath a Rent charge to him and his heires, iſſuing out of certain Land, if he purchaſe any parcel thereof to him and his heirs, all the rent-charge is extinct; for as the unity of poſſeſſion of parcel of the Land and of the Rent (by the Act of the party) extinguiſheth the whole Rent: Howbeit, if the grantee of a Rent-charge grant the Rent to the Tenant of the Land and to a ſtranger: In this Caſe the Rent ſhall not be totally extinct, but onely for the moity, &c.

Rent-charge not extinct as a ſtranger.

Co. ibid. 208 b. 3. & Co. l. 2. 75. b. 3. Lord *Cromwels* Caſe. Co. ib. 128. a. 3 Co. lib 6. 35. a. *Bothies* Caſe.

6 As concerning a Condition of an Obligation, and upon a Feoffment, there is a diverſity, where the Act, that is void; is to be done to a ſtranger, and where to the obligee or feoffor himſelfe: As if one make a feoffment in Fee, upon Condition, that the Feoffee ſhall enfeoffe a ſtranger, and no time limited, the feoffee ſhall not have time during his life to make the feoffment: for then he ſhould take the profits in the interim to his owne uſe, which the ſtranger ought to have: And therefore in that Caſe, he ought to make the feoffment, as ſoon as conveniently he may: And ſo it is likewiſe of the Condition of an Obligation: It is otherwiſe, when the Condition is, that the feoffee ſhall re-enfeoffe the Feoffor: for there the Feoffe hath time during his life, unleſſe he be haſtned by requeſt, and this is in reſpect of the privity of the Condition between them: There is another diverſity, when the obligor or feoffee is to a ſtranger, & when a ſtranger is to enfeoffe ye feoffee or obligee: As if A. enfeoffe B. of Blackacre, upon Condition that if C. enfeoffe B. of Whiteacre, A. ſhall re-enter: In this Caſe, C. hath time during his life, if B. doth not haſten it by requeſt: And ſo likewiſe of an Obligation, &c. vide infra 22.

Condition. Stranger. Feoffee. Obligee.

Co. ibidem.

7 There is another diverſity, when the Condition concerneth a transitory or local Act, and is to be performed to the feoffee or obligee, and where it is to be performed to a ſtranger: As if A. be bound to B. to pay ten pounds to C. A. tenders to C. and he refuſeth it; In this Caſe the bond is forfeited, whereas, if the feoffee or obligee refuſe it upon tender, the bond is not forfeit, in reſpect of the privity of the Condition, &c.

Stranger. Feoffee. Obligee.

Co. ibid. 209. b. 2. & Co. l. 5. 96. *Goodalls* Caſe.

8 If it be agreed between the Mortgagor and the Executors of the Mortgagee, that the Mortgagor ſhall be apparent pay the whole ſumme, but that afterwards the Executors ſhall repay part thereof back to the Mortgagor: This is no performance of the Condition; For the Eſtate of the Land ſhall not be reveſted out of the heire, whereas upon

Condition performed by payment of part.

perſon

perſon, without a true and effectuall payment, and not by a colour or ſhadow of payment; as the agreement preſumed ought to guide the payment ſubſequent.

ment to
firſt or
d feoffee
leaſure.

9 Upon a Condition for the payment of money to the feoffee his heirs or aſſignes, if the feoffee makes a feoffment over, it is in the election of the feoffor to pay the money to the firſt feoffee, or to the ſecond feoffee; but ſo if the firſt feoffee die, the feoffor may either pay the money to the heire of the firſt feoffee, or to the ſecond feoffee; For, the Law will not enforce the feoffor to take knowledge of the ſecond feoffment, nor of the validity thereof, whether the ſame be effectuall or not, but at his pleaſure; becauſe he is conceived to be a meere ſtranger unto it, and the firſt feoffee and his heires are expreſſely named in the Condition, &c. Co. ibid. 216. a. 3.

hing colla-
all in ſatiſ-
ction.

10 Upon a Condition for payment of money there is a diverſity, when the money is to be payed to the party, and when to a ſtranger; For, when it is to be payd to a ſtranger, there if the ſtranger accept an Horſe or any collateral thing in ſatisfaction of the money, it is no performance of the Condition, becauſe the Condition in that Caſe is ſtrictly to be performed: But if the Condition be, that a ſtranger ſhall pay to the obligee or feoffee a ſumme of money, there the obligee or feoffee may receive an Horſe, &c. in ſatisfaction, &c. Co. Inſt. p. 1. 212. b. 4.

ndition to
feoffee the
ſelfe and his
ire, or the
offor and a
anger.

11 If a feoffment be made upon Condition, that the feoffee ſhall regrant the Land to the feoffor and his Feme in tail; the remainder to the right heirs of the feoffor, and no time limited for the doing of it, the feoffee hath time to do it during his life, unleſſe haſtned by Requeſt; So it hath been alſo if the Condition hath been, to have re-enfeoffed the feoffor and a ſtranger: becauſe the feoffor, whoſe part is to the Condition, is to take ſeiſin only with his Feme, or with the ſtranger: It is otherwiſe where the Condition is to enfeoffe a ſtranger, or ſtrangers onely: for there it muſt be done in convenient time, &c. But put Caſe (as it is in Littleton 9. 352.) that the feoffee doth before the Eſtate tail be executed according to the Condition, ſo that the Feme hath ſtanding for her to take it, whether is not the feoffee (in that Caſe) bounden to convey an Eſtate to the Feme (as Littleton there ſaith) as where the Condition is ſo, in convenient time, or ſhall have time to doe it during his life; And it ſeemes, that he ought to do it in convenient time, &c. becauſe the Feme is a ſtranger to the Condition: There ſeemes to be the ſame Law alſo in the other Caſe, if the ſtranger happens to ſurvive the feoffee, &c. Tamen quære. Vide ſupra 6. Litt. §. 352. Co. ibid. 219. a. 4. & 226. a. 3. & b. 1.

ffor.
anger.
me.
ſe and re-
inder.

12 If a man make a feoffment upon Condition, that the feoffee ſhall make a gift in tail to the feoffor, the remainder to a ſtranger in Fee, there the feoffee hath time during his life: becauſe the feoffee, who is party and privy to the Condition, is to take the firſt Eſtate: but if the Condition were to make a gift in tayle to a ſtranger, the remainder to the feoffor in Fee, there the feoffee ought to do it in convenient time; becauſe the ſtranger is not privy to the Condition, nor brought in out of the meane profits of the Land, &c. Likewiſe if the Condition be to grant an Eſtate in Fee to the feoffor and his heires, or to the feoffor & his Feme in tail, the remainder to the right heirs of the feoffor, (if in the firſt Caſe) the feoffee, or (in the other Caſe) the feoffee and his Feme die before the Eſtate ſetled, &c. by the feoffee, he hath time during his life to do it to the heirs in Fee or in tayle, unleſſe haſtned by Requeſt: becauſe the heire is privy in blood to the feoffee, and (as to that purpoſe) repreſents his perſon, &c. Co. ibid. 221. b. 1. & 220. a. 3

ndition be
ded with-
the deed.

13 In all actions real, perſonal, and mixt, it is regularly true, that the Condition of a deed cannot be pleaded to defeat a Fee-ſimple without ſhewing Co. ibid. 225. a. 3. & 227. b. 3.

ſhewing forth the ſame Deed in Court: Howbeit a Stranger, which is
Co.lib.215.a.3 not privy to the condition, nor claimeth under the ſame, ſhall not after the condition is executed in pleading, be inforced to ſhew forth the Deed: As if Land be mortgaged upon Condition, and the Mortgagee letteth the Land for years, reſerving a rent, the Condition is performed, the Mortgagor re-enters: In an Action of Debt brought for the Rent, the Leſſee ſhall plead the Condition and the re-entry, without ſhewing forth any Deed; becauſe he is a meer Stranger unto it, and by intendment cannot come by it.

Litt. §. 584. 14 If the Reverſion of a Tenant for life be granted by fine to an-
Co. lib. 321. a. 4 other in fee, and the Grantee dies before Attornment, and the Land deſcends to his Heir: In this Caſe, the Heir cannot diſtrain or avow upon the Tenant for life, nor bring an Action of waſte againſt him before Attornment; there is the ſame Law alſo of the Aſſignee of ſuch a Grantee, &c. Howbeit if ſuch a Grantee die without Heir, ſo that the Land eſcheats to the Lord of the Fee: In that Caſe, the Lord ſhall bring an Action of waſte, &c. without attornment; becauſe he is a Stranger, and cometh in meerly in the Poſt.

Co lib. 338. b. 15 When a Reverſion and a particular Eſtate, or a Rent and the Land out of which it iſſues, &c. happens to come into one and the ſame hand by Grant, Surrender, or otherwiſe: if the intereſt of a Stranger be therein concerned, the particular Eſtate, or Rent, &c. ſhall (in conſideration of Law) either be drowned or continued, when either the one way or the other the Stranger may reap a benefit, or prevent a prejudice: Howbeit of Parties and Privies, no ſuch conſideration ſhall be had: As if a Feme inheritrix take Baron, and have iſſue a ſon,
Litt. §. 636. and that Baron dies, and ſhe takes another Baron, and the ſecond Baron lets the Land for life, and after the Feme dies, and the tenant for life ſurrenders his Eſtate to the ſecond Baron, &c. In this Caſe, the ſon may immediatly enter upon the ſecond Baron, for between the Leſſee and the ſecond Baron the Eſtate for life is determined, and ſo likewiſe for the benefit of the iſſue it ſhall be adjudged in Law to be: Alſo, if he in the Reverſion after an Eſtate for life make a leaſe for years, or grant a rent-charge, &c. and then the Leſſee for life ſurrenders: In this Caſe, the leaſe or rent ſhall commence preſently, becauſe it is for the benefit of the Leſſee for years, or the Grantee of the rent (who are Strangers, &c.) that it ſhould ſo do. But if a Reverſion be granted with warranty, and the tenant for life ſurrender: In this Caſe, the Grantee ſhall not have execution in value againſt the Grantor, who is a Stranger, during the life of the tenant for life, for as to the Grantor, the Eſtate for life (notwithſtanding ſuch ſurrender) ſhall (in conſideration of Law) be conſtrued to have continuance, leſt ſuch a ſurrender might work a prejudice to the Grantor that is a Stranger: So if tenant for life ſurrender to him in Reverſion, being within age, he ſhall not have his age; for that would be a prejudice to a Stranger, who is to become Demandant in a real action, &c. Alſo, if tenant for life grant a rent-charge, and after ſurrender, yet the rent ſhall remain, during the life of the tenant for life; for otherwiſe it would work a prejudice to the Grantee of the rent, who is a Stranger, &c. and as to that purpoſe the reverſioner cometh in under the charge. If a Biſhop be ſeiſed of a rent-charge in fee, the tenant of the Land enfeoffes the Biſhop and his ſucceſſors, the Lord enters for the Mortmain, he ſhall hold it diſcharged of the rent; for the Lord claimeth under the Mortmain, and it is for his benefit that the rent ſhould be extinct, &c. If a man maketh a leaſe to A. for life, reſerving a rent of 40 s. per annum to him and his heirs, the remainder to B. for life, the Leſſor grants the reverſion to B.

in

in fee, A. attornes: In this Case B. shall not have the rent, because although the fee-simple do drown the remainder for life between them, yet as to a stranger it is in esse, &c. and therefore B. shall not have it.

er assign- t no acti- of debt a- inst the ex- tor, or ad- inistator.

16 If the executor of a Lessee for yeares assigne over his Interest, an Action of debt shall not lie against him for Rent due after the assignement: So if the Lessee for yeares assigne over his Interest and die, his Executor shall not be charged for Rent due after his death: because by the death of the Lessee the personal privity of the contract as to the Action of debt in both Cases being determined, the Executor becomes a meere Stranger to the said Leases, &c. There is the same Law also of an Administrator, as appeares P. 41 El. Rot. 2458. in C. B. Marrow & Yelpins Case. Co.l.3.24.a.2. in *Overton & Sydhals* Case. T.37.El. in B.R.

ature of 33 8. cap.39.

17 The makers of the Statute of 33 H. 8. cap. 39. (whereby the heire in taile is chargeable with the Kings debts, as well as the heire in Fee-simple was at the Common Law) did not think fit to charge his alienee, when the heire in taile before any proceese or extent had bona fide alienet the Land; for, they had reason to favor the purchasor, farmor, &c. of the heire in taile, more then the heire himselfe; because they are strangers to the debts of the Tenant in taile, and come to the Land upon good consideration, &c. Co.l.7.21b..3. in the Lord *Andersons* case

ase

18 Lessee for yeares grants a Rent-charge, and surrenders, yet the Rent shall be payd during the yeares: So if he in the reversion grant a Rent-charge during the terme, and then the Lessee surrendreth unto him, he shall pay the Rent during the terme: for, the stranger that is the grantee of the Rent) for his benefit shall say, that the terme continueth, or that it is determined, &c. 1 *El.* 194. *Finch*, 27.

86 *Res inter alios acta alteri nocere non debet, sed quandoque prodesse potest.* Vide *supra*, Max. 51. & 43, 62.

lessee for life a reversion

1 If a man make a Lease for life, and then grant the reversion for life, and the Lessee attornes, and after the Lessor ratifieth the Lessee for life, and makes a feoffment in fee, and the Lessee re-enters; this shall leave a reversion in the Grantee for life, and another reversion in the Feoffee, and yet this is no attornment of the Grantee for life, because he doth no Act, nor giveth assent to any, which might amount to an attornment in law. But res inter alios acta alteri nocere non debet, &c. Co.Inst.p.1. 319.a.4.

nor nce continu- ce.

2 If land be given in taile, saving the reversion to the Donor, and after the tenant in tail by his deed enfeoffes the Donor in fee, this is no dis-continuance of the Estate taile, because the reversion being already in the Donor, it cannot by the feoffment of the tenant in tail, be dis-continued; but if a man make a gift in tail, the remainder in tail, reserving the reversion to himself: In this Case, if the Donee enfeoffe the Donor, that is a dis-continuance, because so there is a mean Estate, that other wise would suffer wrong, and yet would be remediless: there is the same Law also, where the Donee enfeoffes the Donor, and a stranger, &c. for that is also a discontinuance of the whole Land, &c. Co.ib.335.a.1

me not ou- d.

3 If a Feme covert be tenant for life, and the husband make a feoffment in fee, and the Lessor enter for the forfeiture; this shall not out the woman from her just right: for here, albeit the reversion was revested, yet the dis-continuance did still remain at the Common Law. Co.ib.335.a.4

4 If

Co. ibid. 369. b. 2

4 If there be tenant for life, the remainder in fee by lawful and just title, he in the remainder may obtain and get the pretenced right or title of any stranger, and shall not thereby incur the penalty of the Statute of 32 H.8. cap. 9. not only for that the particular Estate and remainder are all one, or that it is a mean to extinguish the seeds of troubles and suits, but likewise because by the doing thereof there can happen no prejudice to any stranger: Howbeit if a disseisor make a Lease for life, lives, or years, the remainder for life, in tail, or in fee, he in remainder cannot take a promise or covenant, that when the Disseisee hath entred upon the Land, or recovered the same, that then he should convey the Land to any of them in remainder, thereby to avoid the particular estate, or the interest or estate of any other: For, the words of the Proviso be (buy, obtain, get, or have by any reasonable way or mean) and that is not by promise or covenant to convey the land after entry or recovery; because that is neither lawful, being against the expresse purview of the body of the Act, neither yet reasonable, because it is to the prejudice of a third person.

Statute of H.8.9. Pretenced rights.

Co ibid. 393 a. 2

5 If one man enfeoffe two with warranty, and the one releaseth the warranty, yet the other shall vouch for his moity.

Warranty.

Co. ibid. 298. a. 2.

6 If a Lease be made to an infant for life, the remainder in fee, the infant at his full age dis-agrees to the Estate for life, yet the remainder good; for that it was once vested by good title, and it is no reason, that the practice betwixt the Feoffor and the Infant, should prejudice him in remainder, who is a stranger, &c.

Infant.

Litt. §. 636. Co. lib. 338. a. 6

7 If a Feme inheritrix take Baron, and have issue a son, and the Baron die, and she takes another Baron, and the second Baron lets the land which he hath in right of his wife to another for term of life; and after the Feme dies, and after the tenant for term of life surrenders his Estate to the second Baron, &c. In this Case, the son of the Feme may immediately enter, which he could not have done, if the tenant for life had not surrendred; And therefore here, Res inter alios acta liberis prodest, &c.

Feme. Inheritrix.

Co. lib. 6. f. b. *Bruertons* case

8 When the tenant holds by an intire service, as by the payment of an horse, or an hawk, &c. yearly: In that Case, if the Lord purchase any part of the Land, the whole service is extinct; but if the tenant alien the Land in parcels to several men that shall give the Lord, who is a stranger, an advantage and benefit; so that every one of the Alienées shall pay an horse, hawk, or the like: For, Res inter alios actæ nemini nocere debent, sed prodesse possent, &c.

Intire Service.

Co. lib. 2. 67. a 4. in *Tookers* Case.

9 If the reversion of two tenants for life, or the Rent or Seignior of two joynt-tenants be granted by fine: In a *Quid juris clamat*, quem redditum reddit, or a Per quæ servitia against such joynt-tenants, the one shall not be permitted to attorn without his companion; because if the one attorn alone, he may prejudice his companion, as if he will not claim to be dis-punished of waste, or condition to have fee, or a future term, &c. for upon general attornment in Court of Record, the Lessee shall lose all advantages, which are not claimed upon Record, because this question is demanded of him, *Quid juris clamat?* &c. And therefore he shall have no more then he claims upon Record: And for this cause one of the joynt-tenants alone by himself shall not be permitted to attorn upon Record, in regard of the manifest prejudice which might happen to his companion, in case it should be attornment of both, &c.

Attornment.

Co. lib. 3. 29. a 3. in *Butler* and *Bakers* Case.

10 It is said, that as relations shall extend onely to the same thing, and to the same intent; so shall they also onely extend betwéen the same parties, and shall never be strained to the prejudice of a third person, who

Relation.

who is neither party nor privy to the said Act; And therefore if a man make a feoffment of a Manor by Deed, or without deed, and a long time after the livery, the tenants attorn to the Feoffee: In this Case, the attornment by necessity, and ut res magis valeat, shall have relation (by fiction of Law) to passe the services ab initio; yet this relation shall not charge the tenants for the arrerages in the mean time: So if Feoffee upon condition grant a Rent-charge of the land, and after the Grantee brings a writ of Annuity; here ab initio this was an Annuity between the Grantor & the Grantee, but as to the feoffor, who is a stranger, and is entituled to enter for the Condition broken, it shall have no relation to his prejudice: Likewise in 30 E. 3. 17. in a Dum fuit infra ætatem (against Richard Spellow) the tenant saith, that his father was seised, and died seised, and so prayeth his age, the Demandant counterpleads the age, because the tenant and his father were joyntly enfeoffed and to the heirs of the father: And it was adjudged that the tenant should not have his age; for albeit this refusal (of taking the land by purchase) shall have relation, as to himself; yet as to the Demandant, who is a stranger, it shall not have relation to delay his Action, when in truth the tenant had the frank-tenement by purchase.

Devise of the third part denied. 11 W. B. and his wife were seised in tail of the Manor of Hinton, (for the Joynture of the wife) holden in Capite, and W. B. was also seised of land in Fobbing, which Manor and Lands did amount to a full third part of all his lands; he was likewise seised of the Manor of Thoby in Capite, which amounted to the other two parts: W. B. deviseth Thoby to his wife, upon condition, that she should take no former Joynture, and dies, the Feme in pais refuseth the Manor of H. Here the question was, whether the will was good for the whole Manor of Th. or but for a part, by the 32 & 34 H. 8. And it was adjudged, that this refusal shall have onely relation as to the Manor of H. and not to the Manor of Th. and to the intent onely that the Feme should not be prejudiced by any thing concerning the Manor of Hinton; Notwithstanding that relation shall not prejudice the heir, which is a third person, and upon whom, by the death of the devisor, part of the Manor of Thoby descended, &c. Co. l. 3. 29. b. & in *Butler* and *Bakers* Case.

Mesnalty. Rent-seck. Mesne. 12 If a Mesnalty become rent-seck by surplusage, as if the tenant holds of the Mesne by two shillings, and the Mesne holds over of the Lord by 12 d. and the Lord purchase the tenancy: In this Case, the ancient seisin of the entire rent of 2 s. is sufficient for the surplusage, being now changed to a rent-seck of 12 d. because the Mesnalty is extinct by the Act of the Lord, and of the tenant paravail, and the nature of the rent of the Mesne is not changed by his own Act, but by the Act of others: And therefore albeit the rent is become seck, yet the Mesne shall distrain for it, &c. as it is said in 2 E. 2. tit. Extinguishment 6. Co. l. 4. 9. a. 43 in *Bevils* case.

Copihold surrender before admit. 13 The heir of a Copihold tenant may surrender to the use of another before admittance, as any other Copiholder may; but this shall not prejudice the Lord of his Fine due unto him by the custome of the Manor upon the descent: So admittance of a Copihold tenant for life, is an admittance of him in remainder to vest the Estate in him: Notwithstanding that shall not bar the Lord of his Fine, which he ought to have by Custome, &c. Co. l. 4. 24. b. 1 in *Browns* case and fol. 23. a. *Fitches* Case.

Copihold. Release. Devisor. 14 A Release by deed (and not by way of surrender) made by one, that hath right to a Copihold, to one that is in possession thereof by lawful admittance shall be effectual to extinguish that right, and to establish the possession of the party so admitted, because in such Case the Lord cannot suffer prejudice, for that he hath his Fine; but if a Copi- Co. l. 4. 25. b. 3 in *Kite* and *Queintons* case.

holvet be entred by entring theer his wife to the diſſeiſee, and up other wrong doer, ſhall not trouble her right, nor any wrong him thereof, becauſe that ſhould tend to the prejudice of the Lord, being a third perſon: for ſo the Lord might loſe his Fine and ſervices, &c. And therefore a releaſe by her in ſuch Caſe, is utterly void, &c.

Co. lib. 4. 24. b. in *Marrels* Caſe. 15 If the Lord of a Copi-hold Manor, grant by Aliens the Inheritance of one of the Copi-holds to another, that ſhall not alter the nature of the Copi-hold, but that it ſhall ſtill retains the quality of Copi-hold land to deſcend to the next heire, &c. for, Cuſtome having once eſtabliſhed and ſet that Eſtate, it cannot be changed by the Act of the Lord: neither yet is it reaſon, that the Act of the Lord and the Alienee ſhould in that Caſe prejudice the Copi-holder, who is a ſtranger: Howbeit ſuch a Copi-hold after ſuch ſeverance of it from the Manor can never afterwards be conveyed by farmer, or otherwiſe, but muſt ſtill be left to deſcend, &c. Copi-hold ſe vered from t Manor.

Co. lib. 4. 118. a. 3. in *Aſtons* Caſe. 16 If a Baroneſſe in her Widow-hood retain a Chaplain according to the Statute of 21 H. 8. c. 13. and after marry a Peere of the Realme; Albeit this ſeemes to be caſus omiſſus in that Act, yet ſhall not ſuch marriage be a Countermand of the retainer: for, Res inter alios acta, &c. Retainer d Chaplain.

Co. l. 5. 99. b. 4. 17 Tenants at Will, or other particular Tenants or occupiers of Lands cannot by their Act bind him, that hath the Inheritance. In Rookes Caſe. Act of mean

Co. l. 6. 12. b. 4. *Morrices* Caſe 18 It is ſaid, that if two joynt-tenants be with warranty, and one of them diſſeiſeth the other, and the diſſeiſee brings an Aſſiſe, and upon his prayer hath imparlance to recover in ſeverality; In this Caſe, the Warranty is gone: For, albeit he hath a conditionall judgement, yet he, that is bound by the Warranty, is neither party nor privy, or any way conſenting unto it: as he is, when the partition is made by force of the Act of Parliament. Joint-tenan Warranty. Severalty.

Co. l. 5. 50. b. 2. in *Boſwels* Caſe. 19 It is agreed per totam Curiam in 50 E. 3. 14. b. that if Tenant for yeares, or Guardian bring a Quare Impedit, and the Defendant hath a Writ to the Biſhop againſt the Termor or Guardian, and his plaintife is admitted, inſtituted, and inducted: yet the Tenant of the Freehold ſhall not put him thereby out of poſſeſſion, &c. Preſentment by terme. Guardian.

Co. l. 6. 51. b. 4. in *Boſwels* Caſe. 20 No incumbent ſhall be removed upon the Statute of Weſt. 2. cap. 5. by Quare Impedit, or Aſſiſe de darrein preſentment purchaſed within the Limitation, unleſſe the incumbent be named in the writ, quia res inter alios acta alteri nocere non debet, although the incumbent be in by deſeaſible title: And with his accords 9. H. 6. 32. For, quicunque aliquid ſtatuerit parte inaudita altera, aequum licet ſtatuerit, haud aequus fuerit. In *Quare Im pedit* the I cumbent pu

Co. lib. 6. 57. *Bredimans* Caſe. 21 A man deviſeth rent out of the Manor of D. and deviſeth the manor for yeares to another, the tenant enters and pays the Rent, after the terme ended, the deviſee of the Rent brings an Aſſiſe againſt the Terre-tenant; And it was adjudged that the payment of the Rent by the Tenant for yeares was not ſufficient ſeiſin to him the Terre-tenant after the terme determined: For, there is a diverſity between receiving and giving of ſeiſin: becauſe it is true, that he which hath but a terme for yeares may take ſeiſin to the benefit of him that hath the Freehold: In 45 E. 3. 26. The grantee for yeares of a Common uſeth it, ſhall gain ſeiſin to him in Reverſion, 22 Aſſ. 84. accord 11 E. 3. Aſſiſe 86. payment to the grantee for yeares of a Rent, is ſufficient ſeiſin for him in Reverſion: in M. 39 & 40 El. the Countieſſe of Northumberlands Caſe in the 9. Rep. fol. 97. b. Preſentment by the grantee for yeares of the proche in avoydance is a ſufficient title in a Quare Impedit for the Grantor: There is the ſame reaſon of Leaſe for life, tenant in Dower, by the Courteſie, Guardian, Tenant by Statute Merchant, Staple, &c. And this agrees with divers opi- Rent paid the Leſſee prejudice t the terre-t

nions

nions in 7 E. 4. 20. 22 E. 4. 9. b. 16 H. 7. 18. a. 9 H. 7. 23. Br. *Quare* Impedit, 122. 13 Eliz. Dier 300. But sicut beatius est, ita majus est dare quam accipere, for the termor cannot give seisin of the Rent (as in the Case alone put) because that would trench to the dis-advantage of the Terre-tenant, who is a Stranger: Howbeit he may take seisin, &c. for his benefit, according to the Rule, Res inter alios acta alteri nocere debet, sed quandoque prodesse potest.

In *Quare Impedit* the Patron must be party.

22 John Hall brings a Quare Impedit against the Bishop of Bath and Wells, and Thomas Maunton Clerk defendant for disturbing him from presenting to the Vicarage of W. And it was resolved, that the writ should abate; because the Patron was not named in the writ; for so the Patronage might be recovered against him, that hath nothing in it: And it is no reason, that he, who is Patron, should be dis-possessed and outed of his Patronage, when he is a Stranger and no partie to the writ, and especially in this Case, when he may be made partie to the writ, &c. So in 42 E. 3. fol. 7. One brings a *Quare* Impedit against another, the Defendant saith, that he claimes nothing in the Patronage, but saith that the Bishop presenteth him by lapse, Judgment si tort. &c. And there Belknap prayd a writ to the Bishop, because he disclaimed in the Patronage, but the Court could not grant it: because neither the Patron nor the Bishop (who in that Case was in lieu of the Patron) were named in the writ: And therefore it was adjudged, that the writ should abate: For, if such a writ should be maintainable, every Patron by covin between a Stranger and the incumbent might be outed of his advowson: And with this agrees, 9 H. 6. 30, 31. &c. 3 H. 4. 2, & 3. 13 H. 8. 13. Howbeit in a Quare Impedit, when the presentation onely is to be recovered and not the Advowson, neither yet the Patron to be put out of possession, In that Case, the writ is adjudged good without naming the Patron, &c. as it was adjudged in 7 H. 4. 25. 37.

Co. l. 7. 25. b. 4. in *Maunton's* Case.

Joint-tenant Release. Continuance.

23 A judgment in debt is given against joint-tenant for life, who releaseth to the other, who dies, the Reversioner enters, the Plaintife sues execution: And in this Case, it was adjudged, that notwithstanding the death thereof before, and that the Lessor entered, and is in of his ancient right; yet as to the Plaintife the estate hath continuance: And if the Baron seised of Rent, Common, &c. in fee, release to the Terre-tenant, that Rent, Common, &c. is extinct: And yet having regard to the Feme they have continuance: for she shall be thereof endowed, as it is adjudged in 7 E. 2. Dower 243. &c.

Co. l. 6. 78. b. in the Lord of *Abergavenies* Case.

ower. ent. Common.

ent *in esse* ther release.

24 Dixwel and his Wife, and Lillingston and his Wife levy a fine of the Rectory of Lidlington in Com. Bedf. the Conusees rendera rent charge of 30 l. per an. to several for life to commence after his wishes decease, proviso, quod non extendit ad onerandum personas les Conusees; &c. and then also render the Rectory to Dixwell during his wifes life, the Remainder to Lillingston, &c. Afterwards they recognizance to Duncombe of 500 l. in the nature of a Statute staple according to the statute of 23 H. 8. Dixwel dies, Lillingston entreth. Dixwel maketh to Lillingston, Duncombe, sues a Certificate, the Clerk of the Statute certifies the recognizance, whereupon the rent was extended, Whereupon a liberate was delivered unto Duncombe, who bringeth an Action of debt against Lillingston (who all that while was Tenant of the Rectory) and Duncombe avers upon the life of Dixwel. How it was adjudged, that as to Duncombe (who is a Stranger) not withstanding such release the Rent remaines in esse, for the purpose by the Common Law a rent-charge shall be in respect of strangers, unless the Baron be seised of the rent in fee, and release to the Terre-tenant, yet the Lands shall be sometimes, &c.

Co. lib. 7. 38. *Lillingstones* Case.

Co. l. 8. 133. a. 2. in *Turners* Case.

Administrator, composition.

25 If an Executor, or Administrator compound with one, who hath judgement of 100 l. for 60 l. this under-hand composition shall not prejudice another creditor, that is a stranger: For, an Executor and Administrator ought to execute their office lawfully, in paying all duties, debts, and legacies in such prescribency as the Law requires; truly, in converting nothing to their owne use, diligently, quia negligentia semper habet infortunem comitem; And an Agreement between two shall not annoy a third person. See Goodals Case, Co. lib. 5. 96. & supra R. 8. ex 8.

Co. lib. 8. 136. a. 1. in Sir *John Nedhams* case.

Bishop. Obligor. Administrator.

26 If the obligee make the obligor his Executor, this is (in Law) a release of the debt; because it is the Act of the obligee himselfe, and with this accords 8 E. 4. 3. 21 H. 4. 2. b. &c. But if the Archbishop Grant letters of Administration to the obligee, this shall not extinguish the debt, but it shall still remaine; for, the Act of the Archbishop and the obligor shall not wrong the same, who is (in that Case) as a third person.

Co. l. 8. 138. a. in Sir *Francis Barringtons* Case.

Statute of 21 E. 4. 7.

27 It appeares by the preamble of the Statute of 21 E. 4. cap. 7. (which gives Licence of enclosing severall woods in forests, &c. seven yeares after they are felled for the better preserving of them from cattle) between what persons and for what against whom that Act was made: Viz. the parties to that great contract by Act of Parliament are, the subscribers having woods, &c. within forests, chases, and parkes, on the one part, and the King and other owners of forests, chases, and parkes, on the other part: so that the Commoners are not any of the parties, between whom that Act was made: And therefore being strangers unto it ought to receive no prejudice by it: So likewise the Act of 11 H. 5. being made between the King and the Priors aliens (whereby the Priories aliens were given to the King) shall not extinguish the seniory of the Prior of Castle-acre, which he had out of a Rectory parcel of a Priory alien: Albeit there was not any saving in the Act. Sect. M. 37. Hen. 8. in Boswells Case in Curiam Wardorum, it was resolved, that when an Act makes any conveyance good against the King and any other person or persons in certaine, this shall not take away the rights of any other: albeit there be no saving in the Act to preserve their rights.

Co. l. 8. 145. b. 2. in *Davenports* Case.

Procheine, Avoidance infra eas.

28 The Rector of Harrington being seised of a Rectory and of a Messuage with the appurtenances, and the Rectory and Messuage became void within the terme: And in this Case it was resolved, that the [illegible] as to the grantee [illegible]

Co. l. 9. 139. b. 2. in *Astroughs* Case.

Copercenors. Disseisor.

29 It is regularly true, that a Rectory cannot be suspended in part and not in the residue, as it is holden in 39 H. 8. Extinguishment, Br. 48. where the Bishop and Parson regula plures fallit, &c. if there be two Copercenors of a Rectory, and one of them disseiseth the Farmer, or tenant, or endowe the Vicar by default of the title, the other may distrain her for the entirety of the Rectory for the moity of her Copercener against the Parson, and shall not prejudice her in that Case.

Co. l. 9. 141. a. 2. in *Beaumonts* Case.

Tenant in tail. Fine no barr

30 If a man regularly seised, &c. of a Rectory, &c. in fee, makes a Feoffment to divers persons, with warranty, &c. to B. who had nothing in, &c. and after by confirmation shall pass the same in tail, &c. and the Feoffees bring a Writ of Entry sur disclaimer against the Feoffor, and he vouches the Feoffees, and they enter into the warranty, but not as to the disseisee, quia [illegible] shall not bar the disseisee of the same as to [illegible] but not as to the disseisee, quia [illegible] by Fine sur Conisans de droit come ceo, &c. to the Feoffees, and they render the same to the Feoffor for life, the remainder to the Feoffees in tail, the remainder to the Feoffor in fee, and he grants the reversion to another, and the Feoffees attorn, this shall not bar the disseisee, quia [illegible] shall not bar the disseisee of the same as to [illegible] but not as to the disseisee, quia [illegible] by Fine sur Conisans de droit come ceo, &c. to the Feoffees, and they render the same to the Feoffor for life, the remainder to the Feoffees in tail, the remainder to the Feoffor in fee, and he grants the reversion to another, and the Feoffees attorn, this shall not bar the disseisee, quia [illegible]

to the Iſſues in taile, was a barre, but not as to the Feme; who was a ſtranger unto it: And therefore if there be Baron and Feme: tenants in ſpeciall taile, the Reverſion to the Donor, they have iſſue, the Baron levies a fine with proclamations to a ſtranger and dies, the Feme enters; In this Caſe the Feme hath deveſted the whole Eſtate out of the Conuſee, and reveſted the Eſtate taile in herſelfe, the immediate reverſion to the Donor, and hath left nothing but a poſſibility in the Conuſee: for the practiſe betweene the Baron and the Conuſee ſhall not barre the Feme, of her right, who is a third perſon.

not ex- by pur- e of the

31 A. poſſeſt of an houſe in London for 31 years, deviſeth, that Iſabel his wife ſhall enjoy the profits thereof, durante Viduitate, and that then the reſidue of the term ſhould remain to B. and dies, Iſabel by licence of the executor entars into the houſe, and purchaſeth the fee, and then marries C. whereupon B. enters; And it was reſolved, that he might ſo do; for albeit the whole term was in Iſabel, quouſque, &c. ſo that by the purchaſe of the Fee-ſimple, the intereſt of Iſabel was extinct, yet that ſhall not defeat the executory Intereſt of B. but that after the marriage of Iſabel, and not before, he may well enter, &c. Hammington and Rudyards Caſe, Tr. 28. Eliz. rot. 1674. cite per Co. Ch. Juſt. ubi in margine. Co. l. 10. 52. a. 3. in *Lampets* Caſe.

is an Act of Parl. the ſubject concerned

32 Whereas the Act of 32 H. 8. cap. 46. ordains, that the King ſhall appoint two to be Auditors of the Court of Wards, who ſhall be accounted as one Officer: In this Caſe, the King cannot appoint onely one to execute that Office; for that would be a wrong to the ſubject, who by force of that Act are concerned in the appointment of that Officer, according to the ſame Act, &c. Co. l. 11. 3. b. 4. in Auditor *Curles* Caſe.

In a popular Action, the benefit of the informer not barred.

33 After a popular Action commenced, albeit the Kings Attorney will enter, Ulterius non vult proſequi, or if the Defendant plead a ſpeciall plea (wherein the Attorney General alone uſeth to reply alone) albeit the Attorney will not reply or proſecute for the King, yet the Informer may proſecute for his part: becauſe the Informer by commencing that Suit hath gained that Action, which was popular, to become his private Action, of which neither the King nor any other can releaſe, as to the Intereſt of the Informer, Tr. 31 Eliz. Stretton and Taylers Caſe, cite ubi in margine. Co. l. 11. 65. b. 4. in Doctor *Foſters* Caſe.

Writs in Nature of Lands holden

34 If the tenant will ſue a Precipe in Capite in the Kings Court for ſuch lands as are holden of another Lord, the Law will not ſuffer it, but that Lord ſhall (in that Caſe) have a writ out of the Chancery directed to the Juſtices of the Common Pleas, commanding them, that if from any apparance them, that the Lands are holden of the King, but of another Lord, that then they ſhall not proceed farther, &c. in that Plea, &c. F.N.B. 3. d.

Aſſiſe de Darrein preſentment.

35 If tenant for term of years, life, in Dower or by the Courteſie, ſuffer an uſurpation of the Church, &c. and the term determines, or the tenant dies, having the reverſion unto it left to the Anceſtor that laſt preſented, ſhall have an Aſſiſe de darrein preſentment, if he be diſturbed: If ſo otherwiſe, if Baron, tenant, to whom he himſelf was Lector, ſuffer an Uſurpation; for then he ſhall not have ſuch an Aſſiſe, &c. becauſe (as it ſeems) it ſhall be then imputed to the Lectors folly that he would not deſtrain the tenant from his being, by the Covenant, &c. F.N.B. 31. g.

Aſſiſe in preſentment.

36 The Demain preſentment being put in two ſtrangers, the Aſſiſe ſhews title by another ſtranger that was not party to the writ: In this Caſe that third party ſhall have a writ to the Biſhop to remove him, albeit he was not party; for, the writ is, Quis advocatus ultimo præſentavit, &c. F.N.B. 39. c.

F.N.B. 61.b. 37 In a real Action, if the tenant make ſeoffment, hanging the Plea, and the Demandant is in doubt, that waſte will be committed, &c. the Demandant may have a writ of Eſtrepement, both againſt the tenant, and alſo againſt his feoffee, &c. And it ſeems by the ſame reaſon, that he may likewiſe have a writ of Eſtrepement againſt the tenant, and alſo againſt thoſe that are his ſervants, naming them by their names, &c. Albeit they have nothing in the tenancy, &c. Tamen quære. Eſtrepement *verſus* tenant & feoffee

F. N. B. 134.a. b. 38 In a Perambulatione facienda, if it be made by the conſent of both parties, being tenants in fee-ſimple, it is binding to them and their heirs; but if tenant for term of life of a Seignior, and another who is tenant in fee-ſimple of another Seignior adjoyning, ſue ſuch a writ or Commiſſion, whereupon perambulation is made; It ſeems, that that ſhall not bind him in reverſion; neither yet ſhall perambulation made by the aſſent of tenant in tail binde his heir. Perambulation

F.N.B. 150.c. 39 If the tenant for-ſudge the Meſne, yet the Feme of the Meſne ſhall be endowed. Parſons

40 If two Parſons claim under one and the ſame Patron, one of them may ſue ſpoliation againſt the other in the Court Chriſtian, albeit the profits amount to a fourth part or more: becauſe the title of the Patronage comes not in debate: But if they claim by ſeveral Patrons, and the tithes, or profits, or penſion ſpoiled amounts to a fourth part or more; then foraſmuch as the Patron of the Parſon griefed (being a ſtranger) may ſuffer prejudice, he ſhall (in that Caſe) have an Indicavit or Prohibition to remove the ſuit into the Kings Court, there to be tried at the Common Law; becauſe then the title of the Patronage will come in debate, &c. Vide Statute VVeſt. 2.cap.5. One title. Two titles. Indicavit.

Pl.Co.32.a.3. in *Colthirſt & Beinſbins* caſe. 41 If a man demiſe land to A. for life, the remainder to B. for life, and if B. die, that then C. ſhall have the land, during the life of A. this demiſe is void for the prejudice of the particular Eſtate: for things done in prejudice of others ſhall be void; As in the Caſe of 21 E. 4. where the King had granted to an Abbot, that he ſhould not be Collector, when any tenths were granted per Clerum Angliæ: And then the Clergy of the Province of Canterbury had granteth a tenth to the King, with a Proviſo, that no Collector, which the Biſhop would return, ſhould be diſcharged by any Letters Patents of Exemption made by the King; And the Biſhop returned the ſaid Abbot Collector; And there it is holden, that the Grant made by the Clergy in that point, viz. to charge perſons exempt is void; becauſe it is in prejudice of others: And ſo alſo the above-ſaid remainder to C. ſhall rather be void, then a ſtranger ſhall ſuffer prejudice by it. Remainder void. Exemption not void by Proviſo.

Co.Inſt.p.1. 117.a.2. 42 If a Villain purchaſe Land, the Lord may ſeiſe it, &c. but if he purchaſe a common Sans number, the Lord ſhall not have it; for the Lord may diſcharge the ſame, and that would trench to the prejudice of the terre-tenant, who is a third perſon; there is the ſame Law alſo of a Corodie uncertain, granted to a Villain, and of all other ſuch like uncertain inheritances. The Lord ſhall not have common ſans number.

Co. ib. 100.b.1 43 If the tenant be diſſeiſed, and the diſſeiſor in a writ of Meſne for-ſudge the Meſne, this ſhall not binde the diſſeiſee; ſo likewiſe if the Meſne be diſſeiſed, and a for-ſudgment is had againſt the diſſeiſor, this ſhall not binde the diſſeiſee; for the words of the Statute of VVeſt. 2.cap.9. are, Quando tenens ſine præjudicio alterius, quàm modii, attornare ſe poteſt capitali Domino. The Act of a Diſſeiſor no prejudice.

44 An-

Admittances made by Dominos pro tempore.

44 Admittances made by Diſſeiſors, Abators, Intruders, Tenant at ſufferance, or others, that have defeaſible titles, are good and effectual in the Law: For it is no reaſon, that the Lords competitors for the title of the Mannor, ſhould by any Act they do prejudice the Copihold Tenants, who are ſtrangers to the difference betwixt them; for if they be admitted by any, who is Dominus pro tempore, it ſufficeth; howbeit ſuch wrong-doers cannot grant voluntary Copies. Co. Inſt. p. 1. 58. b. 2.

Advantage to ſtrangers.

45 Leſſee for life levies a Fine, come ceo, &c. to a Diſſeiſor: this is a forfeiture, and he in remainder or reverſion ſhall take advantage of it: Vide plus, ibid. It is ſaid, that if the Diſſeiſee levies a Fine to a ſtranger, the Diſſeiſor ſhall retain the Land for ever: For the Diſſeiſee againſt his own Fine cannot claim the Land, neither can the Conuſee enter, for the right of the Conuſor cannot be transferred to him, but by the Fine the right is extinct, and the Diſſeiſor ſhall take advantage thereof. Co. l. 2. 55. b. 5. in Nicholas's Caſe.

Both wardſhip and relief

46 If there be Lord and tenant by divers tenures in Knight-ſervice, and the tenant is diſſeiſed of the one, and the Diſſeiſor dieth ſeiſed, and the tenant dieth ſeiſed of the other, his heir within age, the Lord ſeiſeth the Body and Lands of that Mannor, and after the heir at his full age recovereth the other Mannor againſt the heir of the Diſſeiſor: In this Caſe, the heir ſhall pay relief for the Mannor recovered, and the deſcent caſt ſhall not hinder it: for, res inter alios, &c. And ſo one Lord of the heir of one tenant ſhall have both wardſhip during his minority, and alſo relief at his full age. Co. Inſt. p. 1. 83. b. 4.

Villain profeſt or Neife married.

47 If a Villain be made a ſecular Chaplain, yet his Lord may ſeiſe both him and his goods; and albeit the Lord cannot ſeiſe his Villain that is profeſt in Religion, nor his Neife that is married to a Free-man; not this, becauſe Marriage is honourable and indiſſoluable; not that, in favorem Eccleſiæ, and becauſe then he cannot live according to his Profeſſion and Religion; yet in both theſe laſt Caſes, the Lord ſhall have his Action in his Caſe, and ſhall recover what he is damnified; for albeit the Profeſſion and Marriage were lawful; yet when they work a prejudice to a third perſon, an action lieth againſt the Sovereign of the houſe and the husband, to the value of the ſeiſe. Litt. §. 202. Co. ib. 136. b. 2.

Ordinary. Adminiſtrator

48 The Ordinary was ſued, after the adminiſtration committed, in plaint of a Debt in London, and Nihil habet being returned, upon ſuggeſtion the debt was attached in the hands of one VV. who was indebted to the teſtator, and after four defaults of the Ordinary, being returned, non eſt inventus, and Oath made that the Debt was due, the Plaintiff has judgement and execution againſt the ſaid VV. againſt whom the Adminiſtrator alſo brings Debt, who pleads the matter ſupra, whereupon the Plaintiff demurs, and it was adjudged, that he ſhould recover: for after the adminiſtration committed, Debt lieth not either againſt or for the Ordinary, and (indeed) it lay not at all until VVeſt. 2. 13. which is within memory, and cannot make a concluſion: And it ſtands not with reaſon, that the undue actings of ſtrangers ſhould debarre the Plaintiffe of his due Debt. Toſts Caſe. Dier. 247. 73. El.

87 Nemo

87 *Nemo punitur pro alieno delicto.*

Co. Inſt. p. 1. 145. b. 3. 1 In a Replevin, the Defendant cannot claim property by his Bailiffe or Servant, becauſe if the claim fall out to be falſe, he that claims ſhall be fined for his contempt, which the Lord cannot be, unleſſe he maketh claim himſelf; And, Nemo punitur pro alieno delicto. Replevin.

Co. lib. 54. a. 1. 2 A Guardian ſhall not be puniſhed for waſte done by a ſtranger, it is ſo penal unto him; for he ſhall loſe the wardſhip both of the body and of the land, though the waſte be but of the value of twenty ſhillings; and if that ſufficeth not to ſatisfie for the waſte, then he ſhall recover damages of the waſte, over and above the loſſe of the ward, &c. Nemo punitur, &c. Guardian. Waſte.

Co. l. 4. 33. b. 4 in *Mittons* Caſe. 3 Quen Eliz. by her Letters Patents grants the Office of the Clerkſhip of the County-Court of the County of Sommerſet to Mitton, and then conſtitutes Arthur Hopton, High Sheriff of the ſame County, who grants that Office to another, and (upon Mittons complaint) it was adjudged that he might: And one of the reaſons of that reſolution was this; That in all writs to remove any Plea out of the County Court into the Common Pleas, the King calls the County-Court, the Court of the Sheriff; and if the Sheriff do not by force of ſuch writs certifie the Record, then ſhall iſſue out proceſſe of contempt againſt him and if the Record be imbezled, the Sheriff ſhall anſwer for it: And therefore it will be full of danger and damage to Sheriffes, if others ſhall be appointed to keep the Entry and Rolls of the County-Court, and yet the Sheriff to be liable to anſwer for them, as immediate Officer to the Court: for, Nemo punitur, &c. And therefore the Sheriff ought to appoint Clerks under him of the County-Court; for which he ſhall at his peril anſwer, &c. Grant of the Clerk of the County.

Co. l. 12. 5. b. 3. in *Sanders* Caſe. 4 In Foſters & Myles Caſe, P. 18. Eliz. in Com. Banco, Rot. 820. it was ſaid, that if Leſſee for years deviſe his term to another, and makes his executors, and dies, and then the executors make waſte, and after aſſent to the Deviſe; In this Caſe, albeit between the executors and the Deviſee that hath relation, and the Deviſee is in by the Deviſor; yet an action of waſte ſhall be maintainable againſt the executors in the tenuit: So likewiſe if the Grantee of a Term upon Condition make waſte, and after the Grantor enter for the Condition broken, the action of waſte ſhall be maintainable againſt the Grantee in the tenuit, &c. 30 E. 3. 16. accord. Waſte.

Co. l. 11. 42. b. 3. in *Godfreys* Caſe. 5 At a Leet the Homage was jointly fined ſix pounds; becauſe they would not preſent according to their duty, &c. And it was reſolved, that the Fine ſo impoſed upon the Jurors jointly was not legally impoſed; becauſe, the refuſal of any of them being ſeveral and perſonal, and the refuſal of one not the refuſal of another; the Fine ought to have been aſſeſſed upon them ſeverally, and not joyntly; for, if ſome of them do refuſe, and the reſt were ready to preſent, &c. thoſe that refuſed were onely to be fined. And therefore the Caſe put Priſot in 25. H. 6. Examination 17. that if one of the Enqueſt eſcape, after that they are ſworn; ſo that they cannot give their verdict, although the reſt did not aſſent thereunto, yet all ſhould be fined, was utterly denied to be law; for Nemo debet puniri pro alieno delicto, whereunto he was neither party, privy, aſſenting, nor conſenting; becauſe then it might be ſaid, Rutillius fecit, Æmilius plectitur: And it was ſaid, that that Caſe was either ill reported, or ill printed. Joynt-fine in Leet.

6 If

Waſte.

6 If a ſtranger make waſte of his own wrong after the writ of Eſtrepement delivered unto the tenant, and againſt the tenants will; In that Caſe the tenant ſhall not be puniſhed for that waſte. F.N.B.61 h.

Joint-amerciament in Court. Baron. Pl. &c.

7 In a Court Baron, if two be amerced outragiouſly for one and the ſame treſpaſſe, they ſhall not joyn in a writ de moderata miſerecordia, for they ought to be ſeverally amerced, albeit the treſpaſs was joyntly committed; So it is alſo in a Plaint ſued by two, if they be non-ſuited; for the amerciament ought to be ſeveral, and they ſhall not joyn in a moderata miſerecordia, becauſe the one ought not to be charged with the offence of the other: And therefore the courſe in the Common Pleas is, when divers Defendants are amerced, to make the Eſtreats of the amerciaments ſeveral: Likewiſe, if divers Demandants are amerced in a Plea real for their Non-ſuit, they ſet the Eſtreats ſeverally upon them: And in theſe Caſes, in the Common Pleas, the courſe is, for the Clerk of the Warrants to deliver thoſe Eſtreats to the Clerks of Aſſiſe, and they to the Coroners, who are to aſſeſs them, and then to re-deliver them to the Clerks of the Aſſiſe, and they to the Clerk of the Warrants, who makes the Eſtreats, and then one of the Juſtices of the Bench, together with the Clerk of the Warrants, goes with the Roll of the Eſtreats into the Exchequer, and there puts them in before the Barons of that Court, from whence they iſſue to the Sheriffe of every reſpective County to be levied for the Kings uſe, and the Officer in the Exchequer, that ſerves them, and ſo prepares them for every ſeverall County, is called the Clerke of the Eſtreates. F.N.B.75.g.h i,k.

Audita querela. Non-ſuit no prejudice.

8 In an Audita querela brought by two, concerning the perſonalty, the Non-ſuit of the one is not the Non-ſuit of the other, becauſe it goeth by way of diſcharge and freeing of themſelves: And therefore the default of the one ſhall not hurt the other. Co.Inſt. p.1. 139.a.4.

Breveſavit.

9 In Debt againſt two Executors, one appears and confeſſeth the Action, the other makes default, and judgment to recover de bonis Teſtatoris, in both their hands; to which purpoſe a Fieri facias iſſues out to the Sheriffe, who returns riens; but that he who made default, had waſted before the receipt of the writ, whereupon a Scire facias iſſues out againſt him onely that had waſted the goods, and he making default, upon Scire feci returned; Execution was awarded of his proper goods onely, and not of his Companions. Dier.210.23. Eliz.

A writ to attach ſureties.

10 In a writ de Plegiis acquietandis, the Plaintiff counts that he was bound with the Defendant as his ſurety, and at his requeſt to a ſtranger by Bill Obligatory, and that at the day aſſigned the Creditor was not paid by the Defendant, whereupon at the Creditors ſuit the Plaintiff was arreſted, and impriſoned, &c. And the Defendant cognovit Actionem, whereupon Judgement was given, quòd acquieret the Plaintiff verſus the Creditor of the ſum and damages aſſeſſed by the Court, &c. Vide F.N.B.137.c. Dier.137.12. Eliz.

Raviſhment.

11 The Statute of Weſt. 2. 35. (againſt raviſhment of Wards) hath two aſpects in it, one civil, another criminal; for it provides, that the Executor ſhall anſwer for the value, ſed non quoad pœnam priſonæ, for Nemo pro alieno facto eſt puniendus: It is ſo likewiſe for husband and wife: For albeit the wife be onely guilty, yet the husband ſhall anſwer the damages, but ſhall not be ſubject to abjuration, or immediate Impriſonment, which is to be perpetual. Howbeit, to the mediate Impriſonment, viz. upon a writ of Execution for the damages and the value of the Marriage, he Hob.93. 7 Jac.Rot.759 More & Huſſey

shall be liable, as in other Trespasses, where the wife only is guilty of the fact.

88 The Law favoureth things done in anothers Right.

Co. Inst. p. 1. 52. a. 2. — 1 Men or no persons are disabled in Law to be private Attorneys to deliver seisin; for Monks, Infants, Femes covert, persons attainted, out-lawed, excommunicate, Villains, Aliens, &c. may be Attorneys: So a Feme may be an Attorney to deliver seisin to her husband, and the husband to the wife, and be in the remainder to the Lessee for life: And the reason hereof is, for that the Attorney doth nothing in his own right, but in the right of another. — Attorney to deliver seisin. Persons disabled.

Co. ib. 52. a. 3. — 2 If Lessee for life make a deed of Feoffment, and a Letter of Attorney to the Lessor to make Livery, and the Lessor maketh Livery accordingly, notwithstanding such making of Livery, he shall enter for the forfeiture; because he doth it in anothers right, and the Lessee for life had Freehold, whereof to make Livery: It is otherwise of Lessee for years, because (in that Case) the Freehold being in the Lessor, and not in the Lessee, the Lessor cannot do it as Attorney to the Lessee, &c. — Attorney to deliver seisin.

Co. ib. a. 4. — 3 If the Lessor make a deed of Feoffment, and a Letter of Attorney to the Lessee for years to make Livery, and he doth it accordingly; this shall not drown or extinguish his Term, because he did it as a Minister to another, and in anothers right: And that is accounted (in Judgement of Law) the act of the Feoffor, and not of the Lessee; neither got doth the Feoffee claim any thing from the Lessee, &c. — Lessee for years. Attorney to deliver seisin.

Co. ib. — 4 If the tenant deviseth, that the Lord shall sell the Land, and dieth; and the Lord selleth it accordingly; yet the Seigniory doth still remain; because the Lord selleth the Land in anothers right, &c. — Devise.

Co. ib. 88. b. 4. — 5 A Guardian in Socage shall not forfeit his Interest by Outlawry, or attainder of Felony or Treason; because he hath nothing to his own use, but only to the use, and in the right of the heir, whose Guardian he is. — Guardian in Socage.

Co. lib. 4. 52. a. 4. 10 H. 7. 29. — 6 If (after the Statute of 1 R. 3. cap. 1. and before the Statute of Wills, 32 H. 8. cap. 10.) Cestuy que use had devised, that his Wife should sell his Land, and had made her Executrix, and died, she had taken another husband: In that Case, she might have sold the Land to her husband; for she doth it in auter droit, and her husband would have been in by the Devise, &c. — Sale by Feme to Baron.

Co. ib. 113. a. 3. — 7 If a man devise, that his Executors shall sell his Land: In this Case, the Executors have no Estate or Interest in the Land, but only a bare and naked power; yet this Feoffment amounteth to an alienation to vest the Land in the Feoffee: for they do it in auter droit: And the Feoffee shall be in by the Devisor: So likewise if a man deviseth that a Reversion or other thing that lieth in grant, shall be sold by his Executors, they may sell the same without Deed; for the Interest shall be in by the Devisor, and not by the Executors, Cause que supra. — Devise of a Reversion to be sold by executors.

Co. ib. 117. a. 2 & 124. a. 4, &c. — 8 If a man be Lessee of a Villain for life, for years, or at will, & the Villain purchaseth the lands in fee, if the Lessee entereth into the lands he shall — Villain.

shall hold the Lands as a perquisite to him and his heires for ever; For the Law respecteth the quality and not the quantity of his Estate: But if a Bishop hath a Villein in right of his Bishoprick, and he purBishop. chaseth Lands, and the Bishop entreth, the Bishop shall have his perquisite to him and his Successors and not to him and his heires; for it came into his hands as in anothers right: So if Executors Executors. a Villein for yeares, and the Villein purchaseth Lands in fee, and the Executors enter, they shall have a fee-simple, but it shall be assets in their hands: For they have it in right of the Testator, &c.

Villein. Executor. Lord, Debt. Trespas. 9 A Villein may (as Executor) have an Action of debt against his Lord, because it is not to recover a debt to his owne use, but to the use of the Testator: neither yet shall the Lord take out of the possession of such Villein, (who is Executor) the goods of the deceased, because he is possessed of them in anothers right: And if the Lord do take them the Villein shall maintain an Action of Trespass against him, and therein recover damages against him to the use of the Testator, &c. for they shall be assets in his hands, &c. Lit. §. 191, 192. Co. ibid. 124. Finch 27.

Out-lawry no disability. 10 If an Executor or Administrator sueth an Action, out-lawry in the Plaintiffe shall not disable him, because the suite is in auter droit, viz. In the right of the Testator and not in his owne right: And for the same a Mayor and Cominalty shall have no Action, though the Mayor be out-lawed, &c. So it is also of one excommunicated. Co. ibid. 128 a. 3. Finch 27

Abbot, &c. Alien. 11 An Abbot, Prior, or Priorelle Alien, shall have Actions reall, personal, or mixt for any thing concerning the possessions or goods of his Monastery here in England, although he be an Alien borne out of the Kings allegiance; because he bringeth it not in his owne right, but in the right of his Monastery, and not in his natural, but in his politique capacity. Co. ibid. a. 4. & b. 1.

A Monke &c. professed in Religion. 12 A Monke or any other professed in Religion within the Realme shall have an action in some Case, as if he be made an Executor, or if he be an Administrator, he shall maintain an Action, not in his owne right, but in the right of the dead: So if a Monke be made a Bishop, or a Parson, or a Vicar, he shall have an Action concerning his Bishoppick, Parsonage, or Vicarage, & sic de similibus: Likewise an Abbot, or Prior, or any other Soveraigne of an house of Religion, albeit they be professe and therefore dead in Law, yet by the policy of Law, they are persons able to purchase, and to implead and to be impleaded, to sue and to be sued, for any thing, that concernes their house; For, they do it in auter droit, and otherwise their house might be prejudiced, and other men also of their lawfull actions: And this is the ancient Law of England, as appeares by the Mirrour (c. 2. §. 14.) in these words Des biens des gents de Religion, appent l'action al Chiefe en son nosme par luy & son Covent: Also if a Monke, &c. be mounned, beaten, imprisoned, &c. the Abbot and the Monke shall (in that Case) joyne in an Action against the wrong doer; and if the writ be ad Damnum ipsius Prioris, the writ is good, or if it be ad Damnum ipsorum, it is good also: Likewise if a Monk be falsely and maliciously inwitted of Felony and Robery, and afterwards is lawfully acquited his Soveraigne and he shall joyne in a writ of conspiracy, or the like: And what is here spoken of a man professed in Religion, is also to be understood of a Nunne sanctimonialis, mutatis mutandis. Co. ibid. 132. b. 3.

A man may give his owne Executors. 13 If A. be bound to the Abbot of D. A. is professed a Monk in the same Abbey, and after is made Abbot thereof, he shall take an action of debt against his owne Executors, &c. Co. lib. 133. b. 4.

Summons, and severance. 14 Regularly, in personal actions there shall not be summons and severance, for the non-suit of one is the non-suit of both, &c. Notwithstanding Co. lib. 139. a. 4.

leſſe; ſo ſuch like actions brought by Executors there ſhall be ſummons and ſeverance; becauſe the beſt ſhall be taken for the benefit of the dead: And ſo it is in an action of Treſpaſs, as Executors, for goods taken out of their owne poſſeſſion: There is the like Law alſo in accompt, as Executors, by the receit of their owne hands, &c.

Co. ibid. 172. a. 2.

15 If an Infant be an Executor, upon payment of any debt, due to the Teſtator, he may make an acquittance, becauſe it is in auter droit; but (in that Caſe) a releaſe without payment is void, &c. An Infant.

Co. ibid. 187. b. 4.

16 Albeit Baron and Feme (as Littleton ſaith, ſect. 291.) be one perſon in Law, ſo as neither of them can give any Eſtate or Intereſt to the other, yet if a Charter of feoffment be made to the Wife, the Husband, as attorney to the feoffor, may make livery to the Wife; ſo alſo a Feme covert, that hath power to ſell Land by will, may ſell the ſame to her Husband; becauſe they are but inſtruments for others, and the Eſtate paſſeth from the feoffor or deviſor. Baron. Feme. Livery. Sale.

Co. ibid. 189. b. 3. &c.

17 If Land be given to two Abbots and to their Succeſſors, they ſhall not take by ſurvivor, but are ab initio Tenants in Common: for albeit the words be joynt, yet in regard of their ſeverall capacities, whereby they hold it in ſeverall auter droits, the Law doth adjudge them to be ſeverally ſeiſed: So it is alſo of a ſecular body politique or corporate, as if Lands be given to two Biſhops, to have and to hold to them two and their Succeſſors: Albeit the Biſhops were never any dead perſons in Law, but always of capacity to take; yet ſeeing they take this purchaſe in their politique capacity, as Biſhops, they are plainly Tenants in Common: becauſe they are ſeiſed in ſeverall rights, &c. The like Law is of two Parſons, and their Succeſſors, or of any other ſuch like Eccleſiaſticall body Politique, or Incorporate, &c. Grant to two Abbots. Tenant in Common.

Co. ibid. 190. a. 3.

18 If Land be given to an Abbot and a ſecular man, to have and to hold to the Abbot and his Succeſſors, and to the ſecular man and his heires, they are Tenants in Common, in reſpect of their ſeverall rights and capacities: So it is like wiſe if Lands be given to the Parſon of Dale and a Lay-man, to have and hold to the Parſon and his Succeſſors, and to the Lay-man and his heires: So alſo of a Biſhop, &c. An Abbot, Biſhop, or Parſon, and a Secular man.

C. ibid. a. 4.

19 If Land be given to John Biſhop of Norwich, and his Succeſſors, and to John Over-all Doctor of Divinity and his heires, being one and the ſame Perſon: In this Caſe, he is Tenant in Common with himſelfe. A man Tenant in Condition with himſelfe.

Co. ibidem.

20 If Land be given to the King and a ſubject to have and to hold to them and to their heires, yet they are Tenants in Common and not joynt-tenants; for the King is not ſeiſed in his naturall capacity, but in his Royal and politique capacity, in jure Coronæ, which cannot ſtand in jointure with the ſeiſin of the ſubject in his naturall capacity: So likewiſe, if there be two joynt-tenants, and the Crowne deſcend to one of them, the jointure is thereby ſevered, and they are become Tenants in Common, &c. The King and a ſubject Tenant in Common.

Co. ibid. 215. b. 4.

21 If there had been Lord and Tenant, and the Tenant had left the Land for life reſerving Rent with clauſe of re-entry, &c. In this Caſe (at the Common Law) neither the aſſignee in deed (as the alienee) or the aſſignee in Law (as the Lord by eſcheat) could take advantage of the re-entry; Howbeit (at the Common Law) Guardian in Chivalry or in ſoccage might in the right of the heire take benefit of a Condition by entry or re-entry, &c. Guardian. Entry. Re-entry.

Co. ibid. 224. a. 3.

22 If a man make a feoffment in fee with Condition, that the feoffee ſhall not alien, this Condition is repugnant and void: but (in caſe, that Grant on a ſhop or with Con on no goods.

that a man by licence may give Land to a Bishop and his Successors, or to an Abbot and his Successors, and annex Condition to it; that they shall not without the consent of their Chapter or Convent, alien: because it was intended a Mortmaine, viz. that it should for ever continue in that sea or house: for that they have it in auter droit, for religious and good uses, as was pretended, &c.

ne Execu-
r.
rson.
lease.

23 If a Feme creditor take the debtor to Husband, that is a release in Law of the debt: but if a Feme executrix take the debtor to husband, that is no release in Law: because she hath the debt in anothers right, and that would be a wrong to the dead, and in Law work a devastavit, which an Act in Law shall never work, &c. In Sir John Nedhams Case. Co. ibid. 264. b. 4. M. 30 & 31. El. & Co. l. 8. 136. a.

lene administravit.

24 Upon Plene administravit pleaded by an Executor, Et issint riens inter mains, if it be proved, that he hath goods in his hands, which were the Testators, he may give in evidence that he hath paid to that value of his owne money, and need not plead it specially: because what he did in that case, was in anothers right. Co. ibid. 283. a. 2.

Term drowned.

25 A master of an Hospital, being a sole corporation, by consent of his Brethren, makes a lease for yeares of part of the possessions of the Hospital, and afterwards the Lease for yeares is made Master: In this case, the term is drowned: for a man cannot have a term for yeares in his owne right, and a free-hold in auter droit to consist together (as if a man Lessee for yeares take a Feme Lessor to Wife, &c.) But a man may have a free-hold in his owne right, and a term in auter droit: And therefore if a man Lessor take a Feme Lessee to Wife, the term is not drowned, but he is possessed of the term in her right during the coverture: So if the Lessor make the Lease his Executor the term is not drowned: Causa qua supra: Howbeit in the case first put, if it had been a corporation aggregate of many, the making of the Lease maketh not extinguishment of the term, no more then if the Lessee had been made one of the Brethren of the Hospital: because he then have the free-hold in auter droit together with others, &c. Co. ibid. 338. b. 3.

A term not drowned.

rson.
car.

26 A Parson or Vicar of a Church because he is seised in right of his Church, for the benefit of the Church and of his Successor is in some cases esteemed in law to have a fee simple qualified, but to no any thing to the prejudice of his Successor, in many Cases, the Law adjudgeth him to have an estate but as Clerke for life; Causæ Ecclesiæ publicis causis æquiparantur, ans summa ratio est, quæ Religione facit, ans Ecclesia fungitur vice minoris: Melioremm facere, potest Conditionem suam, deteriorem nequaquam; &c. His alienation of the Glebe makes no discontinuance, &c. Co. ibid. 347. a. 3. Litt. S. 643.

r alienation dis-continuance.

ne Execu-
r.
anuels.
als.

27 If the Wife be possessed of Chattels real in auter droit, as Executrix or Administratrix, or as Customer in Socage, &c. and she intermarryeth, the Law adjudgeth no gift of them to the Husband, although he survive her: In the same manner if a Woman grant a term to her own use, and then taketh Husband and dieth, the Husband surviving shall not have his trust: but the Executors or Administrators of the Wife, for it consisteth in privity: And so it was resolved by the Justices, P. 32 Eliz. in Cancell. in Williams Case: H. 38. Eliz. in Cancell. in Waterhouses Case, &c. Co. ibid. 351. a. 4.

onal
e.
n.

28 If a Feme sole be possessed of Chattels personal in her owne right, and she taketh Baron: In that Case, that marriage is an absolute gift (in Law) of all such Chattels, whether the Husband survive the Wife or no; But of personal goods in auter droit, as Executrix, or Administratrix, &c. the marriage is no gift of them to the Husband, although he survive his Wife. Also as to personal goods (in Case of Baron Co. ibid. 351. b. 1.

Baron and Feme) there is a diverſity worthy of obſervation, between a property in perſonall goods (as is aforeſaid) and a bare poſſeſſion: for if perſonal goods be bailed to a Feme, or if ſhe find goods, or if goods come to her hands as Executrix to a Baſtiſe, and ſhe taketh an Huſband, this bare poſſeſſion is not given to the Huſband, but the action of detinue muſt be brought againſt the Huſband and Wife: becauſe the Poſſeſſion which ſhe hath, is in auter droit, &c.

Co. ibid. 370. a. 4.

Parſon. Warranty. No barre Juris utrum, or Aſſiſe.

29 It is to be obſerved, that in all Caſes which Littleton putteth in the chapter of Warranty, concerning lineal and collateral Warranty, the heire is ſtill mentioned to be bound by them, he never making once mention of the Succeſſor: from whence it may be inferred, that the Succeſſor claiming in another right, ſhall not be bound by the Warranty of any natural Anceſtor: And therefore in a Juris utrum brought by a Parſon of a Church, the collateral Warranty of his Anceſtor is no barre, becauſe he demandeth the Land in the right of his Church in his politique capacity, and the warranty deſcendeth on him in his natural capacity; And albeit ſome have holden, that if a Parſon bring an Aſſiſe, that a collateral Warranty of his Anceſtor ſhall bind him: becauſe the Aſſiſe is brought of his owne poſſeſſion and ſeiſin, and he ſhall recover the mean profits to his owne uſe: yet ſeeing he is ſeiſed of the Free-hold, whereof the Aſſiſe is brought, in Jure Eccleſiæ, which is in another right then the Warranty, it ſeemeth to be no barre in the Aſſiſe: And of this opinion my Lord Cooke ſeems to be: becauſe he pronounceth it laſt, according to his owne Rule, &c. The like Law is of a Biſhop, Arch-deacon, Deane, maſter of an Hoſpital, and the like, of their ſole poſſeſſions: and of a Prebend, Vicar, &c.

Co. l. 4. 11. b. 3. in *Bevis* Caſe.

Land and Tenant, Suit of Court. Abbot.

30 If there be Lord and Tenant by fealty and two ſhillings Rent, and the Lord by incroachment, (viz. by the voluntary payment of the Tenant) happens ſeiſin of more Rent: then he ought to have, the Law doth ſo greatly favour ſeiſins and poſſeſſions, that neither the Tenant nor his heire ſhall avoid the ſeiſin, ſo had by incroachment, in Avowry: Nevertheleſſe, if an Abbot hold by fealty and Rent, and the Lord incroach ſuite by ſeiſin of the Abbot, &c. This ſeiſin ſhall not prejudice his Succeſſor; but he ſhall diſcharge it: for there is not the ſame reaſon of the Predeceſſor to the Succeſſor that there is to Anceſtor to the heire, &c. As it is agreed in 4 E. 2. Avowry 204.

Co. l. 8. 133. a. 1 in *Turners* Caſe.

Executor. Adminiſtrator ought to execute his Office lawfully, &c.

31 For aſmuch as an Executor or Adminiſtrator hath not the goods of the dead to his owne uſe, but in auter droit, to the uſe of the dead, he ought to execute his Office, and to adminiſter the goods of the dead lawfully, truely, and diligently: lawfully in paying all duties, debts, and legacies, in ſuch precedency and order, as they ought to be paid by the Law: truly, viz. to convert none of them to his owne uſe, neither yet by any practice or devile to barre or hinder any creditor of his due debt, but truly to execute his Office according to the truſt repoſed in him; diligently, Quia negligentia ſemper habet infortunium comitem, &c.

Co. Lib. 8. 135. b. 3. in Sir *John Nedhams* Caſe.

Ordinary cannot diſpoſe the Goods but for the good of the dead. Executor durante minore ætate.

32 The Biſhop who is an Executor appointed by the Law, is not permitted by the Law to make a releaſe of debt or gift of goods: for he hath a ſpecial property in the goods of the dead for the benefit of the dead, and nothing to his owne uſe; and it appeares in 9 El. Dier 253. that the Ordinary hath not power to give authority to another to ſell the goods of the dead; becauſe he hath not any ſuch authority himſelfe; And the Statute of Weſt. 2. is, Bona deveniunt ad manus Ordinarii diſponenda, viz. for the good of the dead: And he is not much unlike (as to that purpoſe) an Adminiſtrator durante minore ætate, who hath ſpecial power committed unto him to diſpoſe of the goods of the dead,

dead, and nothing in prejudice of the Executor, as it is holden in Princes in the 5 Rep. fol. 29. So likewise the Lord of a Copi-hold Tenant, who takes a surrender to the use of another, hath onely power to grant it according to the use of the surrender, and not to the use of any Stranger, as it is holden in the 4. Rep. fol. 28. in Westwicks Case.

ministration to the Obl.

33 If the Obligee make the Obligor his Executor, this is a release (in Law) of the debt; because that is the Act of the Obligee himselfe, but if a Commission of Administration be granted by the Archbishop to the Obligor, that shall not extinguish the debt: because then he hath the debt in anothers right, and for the good of the dead, &c. Co. lib. 132 a. 12 in Sir *John Nedhams* Case

rien, sentment.

34 If a man present to an Advowson, and after lets it for term of yeares, and after the Church is void, and the Tenant for yeares presents, &c. And after the incumbent dies, and Lessor presents, and is disturbed: In this Case, it seemes he shall not have an Assise de darrien presentment: because the Tenant for yeares presents in his owne right: but if a Guardian presente in right of the heire, and after the incumbent die; In that Case, the heire shall present, and if he be disturbed, he shall have an Assise de darrein presentment: because the Guardian did it in auter droit, viz. in the right of the heire, &c. This seemes to be the opinion of Fitz. Howbeit it is resolved in the 5. Report fol. 97. in the Countesse of Northumberlands Case, that the presentation of the Grantee of the prochiene avoydance is sufficient title in a Quare Impedit for the Grantor and his heires: because he doth it in the right and title of the Grantor; So it is also of Lessee for yeares, like, Tenant in Dower, Countesse, Guardian, Tenant by Statute, &c. And with this agrees divers opinions in our Books, viz. 7 E. 4. 20. 22 E. 4. 9. b. 16 H. 7. 18. a. 9. H. 7. 23. Br. Quare Impedit, 122. 13 El. Dier 300. F. N. B. 31. k. *Quare Impedit* Co. l. 5. 97. b. in the Count. of *North.* Case.

35 In debt brought by two Executors the one is summoned and severed, and afterwards he, that was severed, dies, and the Defendant pleads this in abatement; In this Case, the writ shall not abate; because either of them Act in an others right. Co. l. 10. 134. a. 3. in *Read & Redmans* Case

89 The Law dis-favoureth other persons, as Villeins, Bondmen, Out-lawes, Ex-leges, men in Exile, Aliens, and especially Aliens, that are enemies.

llenge to Poll.

1 It is principal Challenge to the Pol, that he is a Villein or Bondman: Also upon the trial in a Writ of right by battaile, the Champion must be a Free-man and no Villein or Bond-man; And this is propter defectum. Co. Inst. p. 1. 156. b. 4.

ure by the ld.

2 A Villein can hold nothing (either Land or Goods) in his owne right; for, Quicquid acquiritur servo-acquiritur Domino, &c. Co. lib. 117. a. 3.

Vagabundi bridi apud Lutgar.

3 In the Reigne of King Elfred, and until a good while after the Conquest, Out-lawry was esteemed in Law a grievous punishment; so that none was in those times out-lawed, save onely for felony, the punishment whereof was death; And therefore in ancient time (as appeares by divers old Books, and Records) An out-lawed man was said to have Caput Lupinum; because he may be put to death by any man, as a Wolfe that hateful beast might: Utlagarus & Waviata capita habent Lupina, quæ ab omnibus impunè poterant amputari; meritò enim sine lege debent perire, qui secundum legem vivere recusant: And another saith, Utlage pur felonie seigne lien pour Loup, & est criable Wolfe-head, pur ceo que Loup est beasts hay to tous gents, & de ceo en avant fuit a aicun de le occire ou soer del Loup, dout custome soloit este de porter les Co. lib. 128. b. 3. a. Fleta l. 1. c. 27. Brack. lib. 3. fol. 421. Britt. 20. b. Mirroir cap. 2. sect. default punishm.

les teſtes al Chiefe lien del County, or de la Franchiſe, & ſoloit tou avoir d'un Marke del County pur cheſcun teſte de utlage & de Loup. And this agreeth with the Law before the Conqueſt, Utlagatus Lupinum gerit caput, quod Anglicè, Wolfeſhead, dicitur: Et hæc eſt lex communis & generalis de omnibus utlegatis: But in the beginning of the Raigne of E. 3. it was reſolved by the Judges, for avoiding of inhumanity and of effuſion of Chriſtian blood, That it ſhould not be lawfull for any man, ſave the Sheriffe onely (having lawfull warrant therefore) to put to death any man out-lawed, although it were for felony, upon paine to ſuffer the like puniſhment, as if he had killed any other man: Note, that about Bractons time proceſſe of out-lawry was given in actions, that were Quare vi & armis, and ſince that by ſundry Statutes in divers other Actions, viz. in Accompt, debt, detinue, annuity, Covenant, Action upon the Statute of 5. R. 2. Action upon the Caſe, &c.

2. Aſſ. Pl. 3. 2 E. 3. tit. Corone 148.

Co. ibid. 201. b. 2

4 Villenage is ſuch an exception in any plea brought by the Villein againſt the Lord, that it ſhall make the writ abate, ſo that he ſhall not have a reſummons or Re-attachment, as in Caſe of the Excommunication, &c. Diſ-abling perſons.

Co. ibid. 158. a. 1.

5 If a man be out-lawed in Treſpaſs, debt, or any other Action he is thereby diſabled to ſerve of a Jury; for that is a principal Challenge to the Poll, viz. propter delictum; becauſe he is Exlex; and therefore is not legalis homo. No Jury.

Co. ibid. 132. b. 4.

6 A man exiled or baniſhed beyond Sea (viz. by authority of Parliament, or in Caſe of abjuration upon an Ordinary proceeding of Law) is in the nature of a dead man in Law: And therefore in ſuch Caſe his Wife may ſue or be ſued without him, as in Caſe when a man enters in Religion and is profeſt a Monk, &c. Thus it was in the Caſe of the Wife of Sir Robert Belknap, one of the Juſtices of the Court of Common Pleas; for, during his baniſhment: being yet alive, ſhe brought a writ in her owne name, whereupon one ſaid, Exiled. Abjured. Dead. The Feme may ſue.

8 H. 4. 7. 2.

Ecce modò mirum, quòd fœmina fert breve Regis,
Non nominando virum conjunctim robore Legis.

10 E. 3. 53. 1 H. 4. 1. b. Pl. in Parl. 19 E. 1.

Solikewiſe E. 3. brought a Quare Impedit againſt the Lady Maltravers, and after that H. 4. brought a writ of Ward againſt Sibill B. during the exile of her Husband: The like was alſo adjudged at the Parliament holden in Craſtinum Epiphaniæ Ann. 19 E. 1. in the Caſe of Margery de Moſe Wife of Th. of Weyland, being the yeare before abjured the Realme for felony, &c. Howbeit if the Husband by Act of Parliament have judgement to be exiled but for a time (which ſome call a Relegation) that is no civil death:) but abjuration (in 8 E. 2. Coron. 425.) is called a divorce between the Husband and the Wife: And therefore in that Caſe the Wife may ſue and be ſued, &c.

Co. ib. 2. a. 4. & Co. l. 7. 17. a. 2. in *Calvins* Caſe. & 25. a. 4. *Calv.* Caſe.

7 If an Alien, Chriſtian, or Infidel purchaſes houſes, lands, tenements, or hereditaments to him and his heires, albeit he can have no heires, yet he is of capacity to take a fee-ſimple, but not to hold; for upon an Office found, the King ſhall have them by his prerogative, of whomſoever the land is holden and in that Caſe the Lord ſhall loſe his Seigniory: So it is alſo if he purchaſe land and die: for in that likewiſe the Law caſteth the freehold and inheritance upon the King. If an Alien purchaſe any Eſtate of free-hold in lands, &c. upon Office found the King ſhall have them. If an Alien be made denizen and purchaſe lands, and die without iſſue, the Lord of the fee ſhall have the eſcheate, and not the King. If an Alien purchaſe a leaſe for yeares, upon Office found the King ſhall have it, unleſſe it be of an houſe for habita- Aliens purchaſe in the Kings.

habitation, to the end he may uſe Merchandize and Commerce; Howbeit ſuch an houſe alſo if he return home and leave or die, the King ſhall have it, and not his Executors, &c.

e born out the Kings ance.

8 A man ſeiſed of land in fée hath iſſue an Alien, that is borne out of the Kings Ligeance, he cannot be heire propter defectum ſubjectionis, albeit he is borne within lawfull marriage: And if he be made Denizen by the Kings letters patents, yet cannot he inherit to his father or any other: But it is otherwiſe if he be naturalized by Act of Parliament: for he is not then accounted in law Alienigena, but Indigena. Co. ib. 8. a. 1.

e not in-ritable.

9 When an Alien is made Denizen, the iſſue, that he hath afterwards ſhall be heirs to him, but no iſſue that he had before: So likewiſe if an Alien commeth into England, and hath iſſue two Sonnes, theſe two Sonnes are Indigenæ, ſubjects borne, becauſe they are borne within the Realme: and yet if one of them purchaſe lands in Fée, and dieth without iſſue, his Brother ſhall not be his heire for there was never any Inheritable blond betwéen the Father and them: and where the Sonnes by no poſſibility can be heires to the Father, the one of them ſhall not be heire to another: It is otherwiſe of naturalization by Act of Parliament: for if the Father be naturalized by Parliament, the Iſſue had before &c. ſhall Inherit: So if an Iſſue of an Engliſh-man be borne beyond Sea, and the Iſſue be naturalized by Parliament, he ſhall Inherit his Fathers Land: but ſo he ſhall not, although made Denizen; becauſe no Alien naturalized by Act of Parliament is to all intents and purpoſes, as a naturall borne ſubject; but ſo is not a Denizen. Co. ib. & Co. l. 7. 7. a. 4. in *Calvins* Caſe & 36 H. 8. Denizen Br. 9. Co. ibid. 129. a. 3.

ower. enant by ourteſie.

10 If a man be ſeiſed of an Eſtate of fré-hold and inheritance in lands, &c. and takes an Alien to Wife, and dieth, ſhe ſhall not be endowed neither ſhall the Baron be Tenant by the courteſie: Howbeit it is otherwiſe in the Kings Caſe, &c. And Edmond the Brother of E. 1. married the Queen of Navarre and died: And it was reſolved by all the Judges, that ſhe ſhould be endowed of the third part of all the lands, whereof her husband was ſeiſed in fée. Co. ib. 31. b. 4. & Co. l. 7. 25. a. 4. *Calv.* Caſe.

ſ-ability of g.

11 It is a good plea in diſ-ability of the perſon, that the Demandant or Plaintiffe is an Alien vee, and this exception holds good in all Actions both reall and perſonal againſt an Alien enemy, but not abſolutely againſt other Aliens: for the Law doth diſtinguiſh betwéen an Alien, that is a ſubject to one, who is an enemy to the King, and one that is ſubject to one, who is in league with the King: And true it is, that an Alien Enemy ſhall maintaine neither Reall nor Perſonal Action, Donec terræ fuerint communes, viz. till both Nations be in peace: But an Alien, that is in league, ſhall maintain perſonal Actions: For, ſuch an Alien may trade and traficke, buy and ſell: And then of neceſſity he muſt be of ability to have perſonal Actions: but he cannot maintaine either reall or mixt actions: So alſo an Alien, that is condemned in an information, ſhall have a Writ of Error to relieve himſelfe, Et ſic de ſimilibus. Litt. §. 189. Co. ib. 129. b. 1. & Co. l. 7. 16. a. 4. in *Calv.* Caſe. & Co. ib. 17. a. 3. *Calvs* Caſe.

ding.

12 If an Alien that is no Alien Enemy, commence a ſuit the Tenant or Defendant may plead in diſ-ability, and ought at laſt to demand Judgement, Si il ſera reſpondue: But if an Alien Enemy bring a ſuit, he ſhall conclude to the Action by ſaying, Judgement ſi action. Co. ibid. b. 2. & in *Calv.* Caſe, *ubi ſupra*.

Co.ib.156.b.4 and 129.a.1. 13 It is a principal Challenge to the Poll, that the Juror is an Alien born, and that is propter defectum Patriæ, or rather ligeanciæ, as Littleton hath it, or Subjectionis, as Bracton. Juror.

Co.l.7.6.a.4 in *Calvins* Case. 14 It is to be observed, that it is, nec Cœlum, nec Solum, neither the Climate nor the Soil; but ligeantia & obedientia, that make a man to be a Subject born; for if enemies should come into this Kingdome, and possesse a Town or Fort, and have issue there, that issue is no Subject to the King of England, though he be born upon his Soil, and under his, both Climate and Pertotian; because he was not born under the ligeance of a Subject, nor under the protection of the King. Ligeance makes a Subject born.

Co. ib. 15 If an Alien of a Country in league with the King come into this Kingdome, and here commit Treason, &c. he shall be invited for it, and proceeded against, according to the municipal Law of the land, and the indictment shall begin and end as other indictments do; viz. the beginning shall be, contra Dominum Regem, &c. and it shall also end thus, Contra ligeantiæ suæ debitum, &c. Onely in the middle these words shall be omitted, naturalem Dominum suum, &c. as it was resolved in Hil. 36. Eliz. in the Case of Stephano Ferrara de Gama, and Emanuel Ludovico Tinoco, two Portugals born, who comming into England under the safe Conduct of Queen Elizabeth, and living here under her protection, joyned with Doctor Lopez, in treason against her Majesty: But if an alien enemy come to invade this Land, and be taken in war, he cannot be indicted of treason for it; because the indictment cannot conclude, Contra ligeantiæ suæ debitum; for he never was in the Kings protection, nor ever ought any manner of ligeance unto him, but malice and enmity; and therefore in that Case such an Alien shall be put to death by Martial law: And so it was in 15 H.7. in the Case of Perkin VVarbeck, who being an Alien born in Flanders, feigned himself one of the sons of E.4. and invaded this Kingdome, with intent to take upon him the Royal Dignity: but being taken in war, it was resolved by the Justices, that he could not be punished by the Common Law; but before the Constable and Marshal, according to Martial Law, and so he was, according to that Law, adjudged to be hanged, drawn, and quartered; and was in that manner executed accordingly. An Alien in league shall be indicted: It is otherwise of an alien enemy, who shall be punished by Martial Law.

Co. ibid. 17.a. 16 Every Alien is either a friend that is in league, &c. or an enemy that is in open war, &c. Every alien enemy is either so pro tempore, a temporary enemy for a time, or perpetuus, perpetual: or specialiter permissus, permitted in a special manner: An alien friend (so long as he so continues to be) may acquire by gift or purchase Lands, &c. but cannot hold them, he may also have Leases and Goods for Trade and Commerce sake, maintain personal actions, &c. as is above said: But if such an Alien become an Enemy, (as all Aliens friends may) then is he utterly disabled to maintain any action, or get any thing within this Realm: but a perpetual enemy (though there be no Wars by fire and sword between them) cannot maintain any Action, or get any thing within this Realm; such as are all Infidels, which are (in law) esteemed perpetui inimici; because the Law presuming that they will not be converted (that being remota potentia) between them (as with Devils, whose Subjects they are) and the Christian, there is perpetual hostility, and can be no peace: For, as the Apostle saith, 2 Cor. 6. 15. Quæ autem concordia Christo cum Beliali, aut quæ portio fideli cum infideli? And the Law saith, Judæo Christianum nullum serviat mancipium: Nefas enim est, An alien friend and enemy.

eſt, quem Chriſtus redemit Blaſphemum Chriſti in ſervitutis vinculis detinere, Regiſter 282. Infideles ſunt Chriſti, & Chriſtianorum inimici; And herewith agreeth the Book in 12 H. 8. fol. 4. where it is holden, that a Pagan cannot have or maintain any action at all: And upon this ground there is a diverſity between the Conqueſt of a Kingdome of a Chriſtian King, and the Conqueſt of the Kingdome of an Infidel: For if a King come to a Chriſtian Kingdome by Conqueſt, ſeeing that he hath vitæ & necis poteſtatem; he may at his pleaſure alter and change the Lawes of that Kingdome; but until he doth make an alteration of them, the ancient Lawes thereof ſhall remain; Howbeit, if a Chriſtian King ſhould conquer a Kingdome of an Infidel, and bring them under his ſubjection; there ipſo facto, the Lawes of the Infidel are abrogated: for that they be not onely againſt Chriſtianity, but againſt the Law of God and Nature, contained in the Decalogue: And in that Caſe, until certain Lawes be eſtabliſhed amongſt them, the King by himſelf, or ſuch Judges as he ſhall appoint, ſhall judge them and their Cauſes, according to natural equity, in ſuch ſort as Kings in ancient time did within their Kingdomes, before any certain municipal Lawes were given: But if a King hath a Kingdome by title of Deſcent; there, ſeeing by the Lawes of that Kingdome he doth inherit the Kingdome, he cannot change theſe Lawes himſelf, without conſent of Parliament, &c. As for an Alien Enemy, that is, inimicus permiſſus, he is an Enemy that comes into the Realme by the Kings Conduct, &c. Vide 7. 4.

The Defendant pleaded an Alien.

17 In an Action brought by a Subject againſt an Alien, the Subject ſhall plead, that the Defendant is an Alien born for the benefit of the King: to the end, that the King upon Office found may ſeiſe that, whereof the Alien is ſeiſed or poſſeſt, and alſo that the tenant may yield the ſame to the King, and not to the Alien, becauſe the King hath beſt right thereunto. Co. ibid. 25. a. 4. in *Calvins* Caſe.

Plea againſt an Alien.

18 In an Action real againſt an Alien born, it is a good plea in diſability of the perſon to ſay that he is an Alien born, otherwiſe in Actions perſonal: but againſt an Alien Enemy it is a good plea in both. Dier. 2. 2. 6 H. 8.

Abjured perſon.

19 A perſon abjured is diſabled to ſue any Action; for that he is extra Legem; and yet he cannot be properly ſaid to be Out-lawed. Co. Inſt. I. 128. a. 4.

90 As concerning the ages of Infants, the Law ordereth them in this manner;

Seven, for the Lord to have aid for the marriage of his eldeſt daughter of that age.

Litt. §. 36. Nine, for a woman to deſerve her Dower.

Twelve for a man to take the Oath of Allegiance in a Turn of Leet; and alſo to binde a woman in matter of Marriage.

Fourteen, the age of diſcretion; and therefore that a competent age to binde the man in matter of Marriage, for a Ward in Soccage to chuſe his Guardian, and for a woman to be out of Ward to the Lord by Knight-ſervice.

Fifteen, for the Lord to have Aid to make his eldeſt Son (of that age) a Knight.

Seventeen, for an Infant Executor to be out of the tuition of Adminiſtrators.

Eighteen, for an Infant to have power to make a Will.

One and twenty, their full age to make good any Act they do, and for a man to be out of Ward to the Lord by Knight-ſervice.

Co. Inſt. p. 1. 33. a. 3. 1 A wife (whether ſhe be ſo de facto, or de jure) if ſhe be of the age of nine years at the time of the death of her husband, ſhall be indowed of what age ſoever her husband be, viz. although he be but four years old, &c. And ſhe muſt be ſo old (at leaſt) to have Dower; Quia junior non potest dotem promereri, neque virum ſuſtinere; nec obſtabit malieni potenti minor annis viri, whereunto it is to be obſerved, that albeit Conſenſus non concubitus facit Matrimonium, and that a woman cannot conſent before twelve, nor a man before fourteen, yet this inchoate and unperfect marriage (from which either of the parties at the age of conſent may diſagree) after the death of the husband ſhall give Dower to the wife; and therefore it is to be accounted in Law after the death of the husband, legitimum matrimonium, a lawful marriage quoad dotem: And (in that Caſe) the Writ upon an Iſſue joyned in a Writ of Dower, Quòd nunquam fuerunt copulati legitimo matrimonio, ought to certifie, that they were coupled in lawful marriage, albeit the man were under fourteen, and the wife above nine, and under twelve. Nine years old to have dower.

Co. ibid. 2 If a man taketh a wife of the age of ſeven years, and after alien his Land, and after the alienation the wife attaineth to the age of nine years; and after the husband dieth: In this Caſe, the wife ſhall be indowed; for albeit ſhe was not abſolutely Dowable at the time of the marriage, yet ſhe was conditionally Dowable, viz. if ſhe attained to the age of nine years, before the death of the husband; for ſo Littleton ſaith §. 36. So that ſhe paſſe the age of 9 years at the death of her husband; becauſe by his death the poſſibility of Dower is conſummate: So likewiſe if the Son endow his wife at her age of ſeven years ex aſſenſu patris, if ſhe before the death of her husband attain to the age of nine years, the Dower is good, &c. The wife of yea. endow after alienation.

Co. ib. 78. b. 3. Brit. 168. b 3 The reaſon wherefore the Law gave the Marriage of the heir-female to the Lord, if ſhe were within the age of fourteen, and that ſhe ſhould not marry her ſelf, appears in Antiquity, viz. Pur ceo que les heires Marriage heir female under 14.

heires females de noſtre terre ne ſe mariaſſent a nos enemys, & donc il nous convica droit lour homage prendre, ſi elles ſe puſſent marier a lour volunte, &c. This is a ſpecial age for an heir female to be out of Ward, if ſhe attain to it in the life-time of her Anceſtor; for at that age ſhe may have a husband able to do Knight-ſervice, &c.

ges aſſigned the male.

4 A man (by the law) for ſeveral purpoſes hath divers ages aſſigned unto him, viz. twelve years to take the Oath of Allegiance in the Turn or Leet; fourteen. to conſent to Marriage; fourteen, for the heir in Soccage to chuſe his Guardian; and fourteen is alſo accounted his age of diſcretion; fifteen, for the Lord to have aid pur fair fife Chivaler; under 21 to be in Ward to the Lord by Knight-ſervice; under fourteen, to be in Ward to Guardian in Soccage; fourteen, to be out of Ward of Guardian in Soccage; and 21 to be out of Ward to Guardian in Chivalry, and likewiſe to alien his lands, goods, and chattels: Alſo a woman hath ſeven Ages for ſeveral purpoſes appointed to her by law; as ſeven years for the Lord to have aid, pur file marier; nine to deſerve Dower; twelve to conſent to Marriage; until fourteen to be in Ward; fourteen to be out of Ward, if ſhe attained thereunto in the life of her Anceſtor; fifteen for to fever her Marriage, if ſhe were under fourteen at the death of her Anceſtor, which was granted by the Statute of Weſt. 1. cap. 22.) and 21 years to alienate her Lands, Goods, and Chattels, Fitz. 82 b. & 149 l.

Co. ib. 78. b. 3 Fitz. 82 b.

Co. ib. 78. b.

Co. l. 6. 70. b. 4 in the Lord *Darcies* Caſe, & Co. l. 9. 72. b. 3. in Doctor *Muſſeys* caſe.

To the female

An Infants Will.

5 An Infant, when he ſhall have attained the age of eighteen years, may make his Teſtament, and conſtitute Executors for his Goods and Chattels.

Co. ib. 89. b. 2.

Unequal partition.

6 If Parceners of full age of lands in Fee-ſimple make an equal partition, he that hath the leaſt part is bound for ever, as well as in caſe of an unequal exchange; Alſo if the unequal partition be of lands in tail, he that hath the worſt part is bound for her life, but her iſſue ſhall avoid it, &c.

Co. ib. 170. a. 2 Litt. §. 255.

No power to grant before 21. Bailiff. Receiver, Inqueſt, Wager of law

7 The Law hath provided for the ſafety of a man's & womans Eſtate, that before their age of twenty one years they cannot bind themſelves by any Deed, or alien any lands, goods, or chattels, before which age a man or woman is called an Infant; Likewiſe if before that age he be made a Bailiff or receiver to another, he is not chargeable in accompt; neither yet can he (under that age) be put upon an Inqueſt, &c. nor make his law of non-ſummons, nor in an action of Debt, according to the Saying, Minor jurare non potuit; yet the husband and wife of full age for the debt of the wife before the Coverture, ſhall make their law; Alſo alſo an Infant, when he is of the age of twelve years ſhall take the Oath of Allegiance to the King in the Turn or Leet; and this was (as Bracton ſaith) ſecundum leges ſancti Edwardi, But (indeed) ſuch was the Law in the time of King Arthur, &c.

Co. ib. 171. b. & Litt. §. 259.

Baron and feme Infants.

8 If husband and wife be both within age, and they by deed indent. to joyn in a Feoffment, reſerving a rent, the husband dieth, the wife may enter, or have a Dum fuit infra ætatem: But if the wife be of full age, ſhe ſhall not have a Dum fuit infra ætatem for the non-age of her husband; albeit they be but one perſon in law.

Co. ib. 337. a. 3

Infant executor.

9 An Adminiſtration durante minore ætate at the age of ſeventeen years of the Infant, executor ceaſeth, before which age he cannot aſſent to a Legacy, &c. Howbeit if Feme be ſuch an Executrix, and ſhe before ſeventeen take Baron of full age, the Adminiſtration alſo in that Caſe ceaſeth; becauſe then the Baron is able to adminiſter, as executor, &c.

Co. l. 5. 29. b. *Princes* caſe.

Age of the heir female.

10 At the Common Law the full age of the heir female was fourteen, as appears in 35 H. 6. 52. and Litt. 22. and if ſhe were of the age of four-

Co. l. 6. 70. b. 4 in the Lord *Darcies* caſe.

fourteen at the death of the Anceſtor, ſhe could not be in ward; and if within that age, ſhe was to have livery at that age, &c. but now by the Statute of VVeſt. 1. cap. 22. if ſhe were under 14 at the death of her Anceſtor, ſhe ſhall be in ward till fifteen, for the Lord to tender marriage; and upon refuſal to have the benefit of thoſe two years, but not to have any forfeiture of Marriage, &c.

Co. lib. & l. 9. 72 b. 3. in Doctor *Huſſeys* caſe. 11 The Statute of Merton cap. 6. Anno 20. H. 3. cannot extend to the heir female; becauſe it ſaith, 14 & ultra, and ultra terminum ætatis ſuæ de 21, &c. which words muſt be underſtood of the heir male, and not of the heir female; becauſe twelve is the age limited for the heir female to give conſent to marriage: but fourteen for the heir male; and therefore that Statute gives a forfeiture in caſe of refuſal of Marriage upon tender to the heir male, &c. *Memo.*

Co. Inſt. p. 1. 78. b. 3. 12 By the Civil Law the full age of a man or woman to alien, demiſe, let, contract, &c. is five and twenty years, for then the Romans accounted men to have plenam maturitatem, and the Lombards at eighteen years. Age by the Civil Law.

91 In things, the Law reſpecteth every thing, according to Worthineſſe.

Co. Inſt. p. 1. 10. b. 1. 1 Littleton ſaith, §. 2. If a man be ſeiſed of Lands in Fee-ſimple, and die without iſſue, Son prochein Coſein collateral del entire ſanke, &c. his next Collateral Coſen of the whole Blood, &c. ſhall have it, as heir unto him; whereupon my Lord Cook puts this Caſe; One hath iſſue two Sons, A. and B. and dieth: B. hath two Sons, C. and D. and dieth, A. purchaſeth Lands in Fee-ſimple, and dieth without iſſue; In this Caſe, D. is his next Coſen, and yet ſhall not inherit, but the iſſue of C. becauſe albeit D. be his next Coſen, jure propinquitatis, yet the iſſue of C. ſhall inherit, being the more worthy, viz. his next Coſen, Jure repræſentationis: And Littleton there meaneth of the right of repreſentation: for legally, in courſe of Deſcents, he is the next of Blood inheritable, becauſe the moſt worthy: In ſuch ſort, that all that Line of C. be they never ſo remote, ſhall inherit before D. or his Line: And therefore Littleton ſaith well, de quel pluis long degree que il ſoit, &c. And yet in the Caſe aboveſaid, if a Leaſe for life were made to A. the remainder to his next of Blood in fee: In that Caſe, D. ſhall take the remainder, becauſe he is next of Blood, and capable to take by purchaſe, though he be not legally next to take as heir by Deſcent: And D. takes the purchaſe by the ſpecial limitation of the party, but the Law caſts the Deſcent upon the iſſue of C. as the more worthy, &c. (Vide Finch, page 116.) So likewiſe, the Blood of the Fathers ſide is more worthy then that of the Mothers; the male then the female; the eldeſt Son then the younger, &c. And therefore thoſe ſhall inherit before theſe, and the female on the Fathers ſide, before the male or female on the Mothers, &c. Quod priùs eſt, dignius eſt, & qui prior eſt, tempore potior eſt jure: Si quis plures filios habuerit, jus proprietatis primò deſcendit ad primogenitum, eò quòd inventus eſt primò in rerum natura. The moſt worthieſt of blood ſhall inherit.

Finch, p. 116. Litt. §. 4. & 5. & Co. lib. 14 a. 1

Co. lib. 53. a. 3. 2 If the Tenant cut down or deſtroy any Fruit-trees growing in the Garden or Orchard, it is Waſte; but if ſuch Trees grow upon any of the ground, which the Tenant holdeth out of the Garden or Orchard, it is no Waſte. Trees in Orchard waſte.

Co. lib. 240 a. 1 3 A dying-ſeiſed and a deſcent, and not a dying-ſeiſed and an Eſcheat, doth take away the entry of the Diſſeiſee, becauſe the deſcent is the worthier title, &c. A Deſcent, Eſcheat.

4 It

ard.
lier.
cens.

4 It is holden, that if there be Baſtard eygne and mulier puiſne, and the Mulier be within age at the time of the dying ſeiſed of the Baſtard, that neverthleſſe the Mulier ſhall be barred: becauſe the Iſſue of the Baſtard is in judgement of Law become lawful heire, and the Law doth preferre legitimation, before the priviledge of Infancy. Co. ibid. 244. a. 3.

es in an nt.

5 It is regularly true, that Laches ſhall not prejudice an Infant; nevertheleſſe Laches ſhall be adjudged in him, if he preſent not to a Church within ſix moneths; For, the Law reſpecteth more the priviledge of the Church (that the cure be ſerved) then the priviledge of Infancy. Co. ibid. 246. a. 1.

nage and lty the thieſt ſer-ces.

6 Amongſt the ſervices due to be performed by the Tenant to his Lord, homage and fealty are of greateſt eſtéeme in the Law, viz. Homage as the moſt honorable and the moſt humble ſervice of reverence (as Littleton ſaith.) And Fealty, the moſt ſacred, being performed by an oath; And therefore the Law makes more accompt of them, then of other inferiour ſervices: for the ſeiſin of them is ſeiſin of all other ſervices whatſoever, and no diſtreſſe for them of any goods or chattels (of what value ſoever) ſhall in judgement of Law be déemed exceſſive: And albeit the Lord diſtraine for them oftentimes, ſo that the Tenant cannot manure his land, yet the Tenant ſhall not therefore have an Aſſiſe de ſovent diſtreſſe, as he ſhall have for Rent and other profits: Vide 28 Aſſ. Pl. 50. 11 H. 4. 2, 42 E. 3. 26. Br. diſtreſſe 80. Co. l. 4. 8 b. 2. in *Bevils* caſe.

Title of King and Subject.

7 When the Kings title, and the title of a ſubject concurrs in commencement, the Kings title ſhall be preferred, as Weſton holds Pl. Co. 263. b. Co. l. 4. 55 a. 4. The *Sadlers* Caſe.

The Kings title by Judicial Record and conveyance of Record.

8 In all Caſes at the Common Law, when the Kings Title accrues unto him by a Judicial Record; (as Gaſcoigne ſaith, 9 H. 4. 4.) by judgement of Record, there albeit, the King had granted all his Eſtate over, yet the party grieved who is put unto his petition, and was to have a ſcire facias againſt the Patentée, as in Caſe of Attainder, Recovery, &c. (44 E. 3. 22. 10 H. 6. 15. 21 H. 7. 2. 3 M. 139. 7 H. 4. 21.) But where the King was onely entitled by conveyance of Record, as if the diſſeiſor had conveyed the land to the King by fine, déed enrolled, or other matter of Record, there albeit the party was put to his petition againſt the King, yet if the King had granted the land over, the diſſeiſée or he, that right had, might enter, or have his Action againſt the Patentée: for, a Judicial Record is always preferred before a conveyance of Record by aſſent, &c. Co. l. 4. 59. b. 3. in the *Sadlers* Caſe.

The Common Law preferred before the Statute Law.

9 A. By déed indented bargaines and ſels a reverſion of land to B. and his heires, and before attornement of the Tenant, or enrollment of the déed (according to the Statute of 27 H. 8. cap. 16.) levies a fine thereof to B. and his heires, and after the déed is inrolled within 6 moneths; In this Caſe, the Conuſee ſhall be in by the fine, and not by the Indenture enrolled; For, when the Fée-ſimple paſſes by the fine to the Conuſee and his heires, the enrolment of the déed indented afterwards cannot deveſt and turne the Eſtate out of the Conuſée, which was abſolutely eſtabliſhed in him by the fine: becauſe then, whereas he was in before in le per, he ſhall be now in le poſt: Alſo, when the Common Law and Statute Law concurre, the Common Law ſhall be preferred, &c. Co. l. 4. 71. a. 1 in *Hyndes* caſe.

good uſe referred be-me an im-lyed.
perſtitious ſe incertain.

10 When land is given to any erpreſſe ſuperſtitious uſe, prohibited by the Statute of 1 E. 6. cap. 14. without limitation of any certainty for the finding of it, there all is given to the King by the ſaid Act: but when a good uſe is limited, and beſides a ſolarie in certain for a Prieſt and towards the finding of him other things, as Books, Bread, Wine, Veſtiments, &c. are tacitè implyed and requiſite, which are uncertain, there- Co. l. 4. 111. b. 2. *Adams* and *Lawberts* caſe.

there the King ſhall not have all by reaſon of the implyed incertainty; becauſe a good uſe expreſſed ſhall be preferred before any thing implied and incident to a ſuperſtitious uſe, &c.

Co l. 5. 28. b. in *Harriſons* Caſe.

11 In debt againſt an Adminiſtrator, who pleads, that the Inteſtate was bound in a Statute ſtaple, Outre que il mad biens, &c. the Plaintiffe replies, that there were Inventures of releaſance for the performance of covenants, which are performed huc uſque, the Defendant demurres; And in this Caſe judgement was given for the Plaintiffe; for, an Obligation ſhall be paid before a Statute to performe covenants, which peradventure will never be broken, but are things in contingency and futuro, and ſhall never barre any preſent debt upon an Obligation or other ſpecialty: And it was adjudged in B. R. Per totam Curiam H. 42. El. that a debt recovered in the Kings Court by judgment ſhall be paid before a bond in nature of a Statute ſtaple or Marchant: becauſe the judgement is a matter of a higher and more worthy nature then private. Records portable in pockets: alſo it ſhall be preferred before a recogniſance acknowledged in any Court by aſſent, which may alſo be privately done; And a judgement ſo given in the Kings Court upon ordinary and judicial proceeding, which remaine in the cuſtody of a ſworne officer, are Records, which are preferred in Law before ſuch Statutes; Et non refert, whether the judgement or recogniſance or Statute be firſt, for be the judgement firſt or laſt it ſhall be firſt ſatisfied, &c. And ſo it was holden per totam Curiam in Co. Ba. in Pemberton and Bartams Caſe, Pl. 32 El. Rot. 235 Which ſee in the end of the Sadlers Caſe in the 4. Rep. Dier 80. 53.

Judgement paiable b other deb obligatio fore a St to perfor venants.

Co. l. 5. 86. b. 3. *Blumfields* Caſe.

12 There are good diverſities betwixt an execution not valuable (as of the body of the Defendant) and an execution, valuable, as of lands, &c. As if two men are bound jointly and ſeverally in an obligation, and the one is ſued, condemned and taken in execution, and after the other is alſo ſued, condemned, and taken in execution, and then the firſt eſcapes, and the other brings his Audita querela; In that caſe, he ſhall be barred to bring that writ, until the Plaintiffe be ſatisfied; So likewiſe if the Defendant in debt die in execution, yet the Plaintiffe may have a new execution by elegit or fieri facias: but if the Plaintiffe have once execution of the lands of the defendant, and after the lands are evicted, there before the Statute of 32 H. 8. cap. 5. he ſhall not have any new execution; for, the execution of the lands was valuable, and accompted in Law for a ſatisfaction, and to (avoid infinitenеſſe) he ſhall have but one valuable ſatisfaction, or one execution with ſatisfaction at the Common Law; &c. So likewiſe, if a Villein be delivered to one in execution, upon recovery in value, and after the Villein dies without Iſſue, yet the Defendant ſhall never have any new execution, becauſe his firſt execution was valuable, and by the Law a man ſhall have but one execution valuable, &c.

An Execution valuable or without ſatisfaction.

F. N. B. 33. m. & 34. v.

13 If two Siſters have an Advowſon, which happens to be void, the eldeſt Siſter ſhall have the firſt preſentment, and ſo the Baron of the eldeſt Siſter (if he be Tenant by the courteſie of the Advowſon) ſhall have the firſt preſentment, and the Tenant in Dower ſhall have but the third, &c. And if there be more Siſters then two, they ſhall preſent by turne according to their ſeveral ages, viz. the eldeſt firſt, the ſecond next, the third next, &c.

Coparceners ſhall preſent by turnes.

Co. Inſt. p. 1. 185. b. 3.

14 If two Femes jointenant of a leaſe for yeares, one of them taketh a husband and dieth, In this Caſe, the moity of the term ſhall go to the ſurvivor, and not to the husband: for, although all chattels real are given to the Husband, if he ſurvive: yet the ſurvivor betwéen the jointenants is the elder (and therefore the more worthy) title, and after the

In joynture a tenure d Baron ſhall not have i

the marriage the Feme continues sole possessed: for, if the husband had died, and the Feme survived, the Feme should have had it, and not the Executors of the husband: but otherwise it is of personal goods.

rdian in cage.

15 If there be three Brethren, & the youngest holdeth land in Socage, and hath Issue and dieth, his Issue within the age of 14 years: In this Case, both the Uncles are in equal degree, and yet the eldest shall be Guardian: because in equal degree the Law preferreth him as the most worthy. Co. lib. 88. a. 3.

16 If the Commandy will Cestuy que use and his Feoffees ingree in a Mortmain grant of Annuise generally, this shall be by construction of Law the Covenant grant or Annuise of the Feoffees who were Owners of the Land, and passeth the Estate by the Common Law, not by Cestuy que use, who has nothing but a trust and confidence, and derives onely his authority by the Statute of 1 R. 3. as it is agreed in 21 H. 7. and the Commandy Law in such Cases shall be by its owne construction preferred before the power of Cestuy que use, given onely by Statute. Co. l. 2. 3 f. b. 4 in Sir Rowland Heywards Case.

Removeall da Record.

17 If a Record of the C. B. be removed into the K. B. for error, or the like; the C. B. cannot write to the K. B. to certifie it, because the K. B. is an higher Court then the C. B. but the Record ought to be first certified into the Chancery by Certiorare, and then to be sent from the Chancery into the C. B. by a mittimus: Howbeit, if it were an inferiour Court, the C. B. may writ to it for any Record, &c. Dier 32. f. 28. & 29 H. 8.

18 If a man be entitled to have a writ of escheate, and he afterwards accept the Homage or fealty of the Tenant, he shall not after such acceptance have a writ of escheate; Howbeit (in such Case) after the acceptance of Rent he may have a writ of escheate: because Homage and Fealty are solemne and more worthy services then rent, and therefore the Lord doth respect them more, therein doth that. Vide infra Max. 117. Pl. 50. F. N. B. Br. 144. o

Courts.

20 If a Statute makes a thing an offence, which was not so at the Common Law, and inflicts a penalty for it to be recovered in any of the Courts of Record, such offence or penalty is not determinable in any other Court, save onely in the four usuall Courts at Westm. Howbeit, where no Court is limited, the King shall have his prerogative in any Court. Dier 23. f. 27. 7 Eliz.

92 The Law respecteth life and liberty most, and the Person above his possessions.

e Lords station.

1 If a Villein (as Executor in mothers right, &c.) brings an action against his Lord, the Lord in his plea makes not protestation, that he is his Villein, &c. the Villein, shall be thereby enfranchised, albeit the Issue be found for the Lord; And this is in favorem libertatis. Litt. §. 192. Co. Inst. p. 1. 124. b. 2. & 126 a. 4.

l of Village.

2 If a Villein sue an action of Trespass or other action against his Lord in one County, and the Lord saith, that he ought not to be answered, because he is his Villein regardant to his mannor in another County, and the Plaintife saith, that he is free and no Villein, this shall be tried in the County where the Plaintife has conceived his Action, and not in the other County, where the Lord saith he is Villein; And this is in favorem libertatis, for, impius & crudelis indicandus est, qui libertati non favet: Angliæ jura in omni casu libertati dant favorem, saith, Forteſcue cap. 42. Litt. §. 193. Co. ibidem b. 4

Co. lib. 137. b. 2

3 If a Villein be once manumitted, albeit he afterwards behaveth ingratefull to the Lord in the highest degree, yet the manumission remaines good; for the Common Law favoureth liberties, wherein it differeth from the Civil Law; for, libertatum ingratum leges Civiles in pristinam rediguntservitutem, sed leges Angliæ semel manumissum semper liberum judicant, quamvis ingratum.

Once manumitted for ever manumitted.

Finch, 29.

Lit. §. 205. Co. lib. 137. b. 4

4 If the Lord grant to the Villein an Obligation, or grant unto him an annuity, or a lease for yeares, &c. the Villein is thereby enfranchised: for when the Lord pleads the Villein to have an Action against him as for debt annuity, &c. or pleads the Villein a certain rent upon Estate in lands, &c. as a Lease for yeares, &c. this amounteth to an Enfranchisement not only during the yeares, but also albeit the lease be made to the Villein without date, yet it is an Enfranchisement for ever, &c.

Power of bringing actions, &c. an enfranchisement.

Co. lib. 139. a. 3 & Fitz. N. B. 78. f. i.

5 But a writ de nativo habendo, non-suite after appearance is peremptory for ever: for thereby the Villein is enfranchised: And so it is if two be Plaintiffes in nativo habendo, if one be non-suite, that is the non-suit of both and no Summons and Severance: both lye in that Case although it is a Real Action; for this is in favorem libertatis: for, in a libertate probanda non-suit nil ti apparence. Is aut peremptory; neither is the non-suit of one, the non-suit of both.

Non-suit peremptory. 22. Ass. pl. 80. so in Assise.

Co. lib. 2. 3.

6 Non-suit in an appeale of murder, rape, robbery, &c. after appearance is peremptory, and this is in favorem vitæ; for, if the Defendant be acquitted, can take out process upon the Statute of Westm. 2. cap. 12. against the Appellant non sibi tortus, or if he purchase his original writ, for that cause he may be non-suit, &c.

In an appeale non-suit peremptory.

Co. lib. 137. b. 3.

7 The Law and the Allegiance of our Subjects have always been so much respect to liberty, that in ancient time manumissions used to be made with a great waste of Ceremony and Solemnity, as appeares in Libro Rubro cap. 78. where it is said: Qui servum suum liberat, in Ecclesia vel Mercato vel Comitatu vel Hundredo coram testibus & pulsum faciat, & libertas ejus, & potius conscribit apices, & hastam & gladium, reliquaque diversorum arma in manibus ponat, &c.

Solemnity in manumission.

Co. ibid. 139. a. 4. Littleton §. 209

8 The Law doth favour much the liberty and freedome of the subject in generall; But especially of a Corporation, as if a Lord of a Manno; will prescribe, that there is a Custome within his Manno; that every Tenant, that marieth his Daughter to any man without the Lords licence, shall pay a fine to the Lord: this is a void Custome to him a Free-man: for every Free-man may marry his Daughter to whom he and she pleaseth: And therefore to claim such a fine by a generall Custome within a Manno;, is against the freedom of a Free-man: that is not bound thereunto by particular term, tenure &c. Although such a Custome will hold amongst Villeins, or amongst Free-men, that hold in villenage or base tenure, &c.

A Custome to have a fine for marrying, the Daughter, void.

Co. lib. 156. b. 1

9 At the Common Law, upon an Indictment or appeal of Treason, or Felony the Prisoner might (in favorem vitæ) challenge peremptorily, viz. 35. which was upon the number of the Jurors: But by the Statute of 22 H. 8. cap. 14. the number was reduced to 20. in petty Treason, Murder, and Felony, and in Case of high Treason, and Misprision of high Treason, it was taken away by the Statute of 33 H. 8. cap. 23. and after revived by the Statute of 1 & 2 Ph. & M. cap. 10. the Common Law was restored; So that now for any Treason the Prisoner shall have his challenge to the number of thirty five, as before.

Peremptory Challenge.

Sam

And ſo it was reſolved by the Juſtices, upon conference between them in the Caſe of Sir Walter Raleigh, and George Brooks. And albeit the Defender be not arraigned upon the Crime it ſelf, but the iſſue is joyned upon a collateral point, yet ſhall the party have ſuch challenges, as aforeſaid: As if a man be out-lawed for Treaſon or Felony at the Kings ſuit, and the party for avoyding thereof alledgeth Impriſonment or the like, at the time of the Out-lawry: In this Caſe, although the Iſſue be joyned upon a collateral point, yet ſhall the party (in favorem vitæ) have ſuch challenges, as if he had been arraigned upon the offence it ſelf; becauſe this alſo (by a mean) concerneth his life. And it is to be obſerved, that this kinde of challenge is called peremptory, becauſe the party may challenge peremptorily upon his own diſlike, without ſhewing any cauſe at all: Howbeit, if the Defendant challengeth for cauſe, he muſt ſhew the cauſe preſently, and then alſo albeit the Juror be tried indifferent, yet may the party afterwards challenge him peremptorily: And all theſe privileges concerning Challenges are granted to the Defendant in favorem vitæ, &c. Co. ibid. 157 b. 4

In criminal caſes, no privy verdict.

10. By the Law of England, a Jury after their evidence given upon the iſſue, ought to be kept together in ſome convenient place without meat or drink, fire or candle (which ſome Books call impriſonment) and they are to have no ſpeech with any, unleſſe it be the Bailiff, and with him onely after they are agreed: When they are ſo agreed, they may in Cauſes between party and party (if the Court be riſen) give a privy Verdict before any of the Judges of the Court, and then they may eat and drink, and the next morning in open Court they may either affirm, or alter their privy Verdict, and that which is given in Court ſhall ſtand. But in criminal Cauſes, which concern life and member, the Jury can give no privy Verdict, but muſt always give it in open Court, and cannot be diſcharged by the Court, or any other, until they have given up their Verdict accordingly, &c. Co. ibid. 158 a. 2.

Life & liberty reſpected more then Infancy.

11. Regularly no Laches ſhall be adjudged in an Infant, yet if an Infant hath a Villein, that is fled into ancient Demeſne, and he claim him not within a year and a day, that Non-claim of the Villein ſhall take away the ſeiſure of the Infant, and this is in favorem libertatis: So if an Infant bring not an appeal of the death of his Anceſtor within a year and a day, he is barred of his appeal for ever; and this is in favorem vitæ, for the Law reſpects more liberty and life then the privilege of Infancy. Co. ibid. 227. b. 2.

Fear of making continual claim.

12. Doubt or fear that concernes the ſafety of the perſon of a man, as Battery, Maheim, Impriſonment, Death, &c. is ſufficient cauſe to excuſe him from going upon the land to make his Claim, ſo that he approach as nèr the land as he dare for ſuch doubt or fear; but fear of having his houſes burnt, or of the taking away or ſpoiling of his goods, is no ſufficient cauſe to excuſe him; becauſe he may recover the ſame, or dammages to the value thereof, without any corporal hurt: And therefore in ſuch Caſe he ſhall go upon the Land to make his claim, &c. Talis enim debet eſſe metus, qui cadere poteſt in virum conſtantem, & quæ in ſe continet mortis periculum, & corporis cruciatum: Et nemo tenetur ſe infortunijs & periculis exponere. Co. ib. 246. a. 2

In Felony, out-lawry may be reverſed by plea.

13. If a man be out-lawed, there is two manner of wayes to reverſe it, viz. by Plea, or by writ of Error, by plea, for when the Defendant cometh in upon the Capias utlagatum, &c. he may by Plea reverſe the ſame for matters apparent, as in reſpect of a Superſedeas, omiſſion of proceſſe, variance, and other matter apparent in the Record, ſo he do it the ſame term, as ſome hold: But for any matters in fact, as Death, Impriſonment, Service of the King, &c. he is Litt. §419. Co. ib. 259, b. 2

driven to his writ of Error; Nevertheleſſe, in Caſe of Felony, he may plead theſe matters of fact alſo, and that is in favorem vitæ, &c.

Co. ibid. 274 b. 2 Finch 29.

14 An expreſſe manumiſſion of a Villein cannot be upon a Condition ſubſequent; For, once free in that Caſe and ever free: And this in favorem libertatis: It is other wiſe of a Condition precedent in the ſame Caſe, &c.

A Villein once free ever ſo.

Co. ibid. 283 a. 3.

15 The life of a man is ſo precious in the eie of the Law, that it will not ſuffer (by way of plea) to juſtifie in the killing or death of a man; And therefore in that Caſe he ſhall be received (as it were by way of excuſe) to give the ſpecial matter in evidence, as to ſay, that it was ſe defendendo, or in defence of his houſe in the night againſt Theeves, and Robbers, or the like.

Life preſerved in the eie of the Law.

Co. l. 3. 11. b. 4. in Sir *Will. Herberts* caſe.

16 The liberty of a man is of ſuch high eſteeme in the conſideration of Law, that he could not (at the Common Law) be impriſoned, unleſſe he were guilty of committing ſome force; for the Law, being the preſerver of the Common peace of the Land, abhorres all force, as one of her capital Enemies; and therefore as concerning ſuch as commit force, the Common Law ſubjects their bodies to impriſonment, as to one of the higheſt Executions of Law, whereby they loſe their liberty, until they have made agreement with the party, and fine to the King; for which cauſe it is a Rule in Law, that in all Actions Quare vi & armis, a Capias lies, and where a Capias lies in proceſſe, there after judgement a Capias ad ſatisfaciendum lies, and there alſo the King ſhall have a Capias pro fine: And with this agrées 8 H. 6. 9. 35 H. 6. 6. 22 E. 4. 22. 40 E. 3. 25. 49 E. 3. 7. and divers other Bookes. But (at the Common Law) if a common Perſon had ſued a recognizſance, or judgement for debt or damages, he could not have the body of the Defendant nor his lands (unleſſe in ſome ſpecial caſe) in execution; but was onely (in ſuch caſe) to have execution, either of his goods and chattels by fieri facias, or of his graine or other profits (which encreaſed upon the land) by levari facias; both which writs were to be ſued within the yeare after the judgement, or recognizſance acknowledged, and if he had neither the one or the other within the yeare the Plaintiffe or Conuſee was then put to his writ of debt, &c. And then by the Statute of Weſtm. 2. cap. 45. a ſcire facias was given, and by cap. 18. cum debitum fuerit recuperatum, &c. an Elegit of the moity of the land, which was the firſt Act, that ſubjected land to the execution of a judgement; or recognizſance, and with this agrées F. N. B. 265. q. And then by the Statute of 13 E. 1. de Mercatoribus, 27 E. 3. cap. 9. and 23 H. 8. cap. 6. In caſe of a Statute Merchant or Staple all the lands, which the Conuſee had the day of the conuſance, ſhall be extended, in whoſe hands ſoever they come, &c. Alſo by the Statute of Malbridge cap. 23. and of Weſt. 2. cap. 11. A capias was given in accompt (for at the Common Law proceſſe in accompt was utterly unknowne) and after by the Statute of 25 E. 3. 17. the like proceſſe was given in the debt, as in accompt before which two laſt recited Statutes the body of the Defendant was not liable to the execution in accompt or debt &c. neither yet was the land liable in debt as afore-ſaid, ſave in the Kings caſe, and in the caſe of an heire in by deſcent, and chargeable by the Obligation of his Anceſtor, &c.

At the Common Law no capias for debt.

Co. l. 4. 40. a. 3. *Darleys* Caſe.

17 In P. 25 E. Wotherel brings an appeal againſt Dorley of murder the Defendant pleads not guilty, and he was found guilty of homicide, and had his Clergy: and after he was finded of murder, and thereupon arraigned at the Queens ſuit and he pleaded the former condition in the appeale at the ſuit of the party: And it adjudged a good barre: becauſe the life of a man is ſo precious in judgement of Law that it

Life ſhall not be twice put in jeopardy for the ſame offence.

ſhall

shall not be twice put in jeopardy for one and the same offence; The like is agreed in Brooks Case. H. 28 El. and P. 33. El. in Vaux his Case, which see Co. l. 4. 45. a.

Non compos mentis shall not lose his life for felony or murder.

18. Every Act, that a man de non sanæ memoriæ doth, either concernes his life, his lands, or his goods; also every Act, that he doth, is either done in pais or in a Court of Record; All Acts, which he doth in a Court of Record concerning his lands and goods, shall bind himselfe and all other persons for ever; Also all Acts, which he doth concerning his lands and goods in pais, in some cases shall bind himselfe onely during his life, and in some case shall bind for ever, &c. But as for his life the Law of England is, that he shall not lose that albeit he kill a man, and thereby make himselfe subject to be indicted for felony or murder, &c. Co. ibid. 124. in *Beverleys* Case.

The death of a man grievously punished by the Law.

19 The Law surpriseth the life of a man, that it inflicteth grievous punishment upon them that are guilty of taking away and destroying it; for the malefactor in that case shall 1. Lose his life; 2. Lose it after an ignominious and odious manner, viz. by hanging, for he shall be hanged betwixt heaven and earth; as unworthy of both; 3. He shall lose his blood, both in respect of his ancestry (for he is esteemed as a Terræ-filius without any Ancestor) and also in respect of his posterity, for his blood is corrupt, and he leaveth behind him neither heire nor posterity; 4. He loseth his lands, 5. His goods, And in such case also the King shall have Annum, diem, & vastum, to the intent that his Wife and his Children should be cast out, his houses demolished, his trees eradicated and stackt up, his meadowes broken up and ploughed, and all that he hath for his comfort, delight, and sustenance, wasted and destroyed; because he hath in such a felonious manner offended against the Law, and all this is, ut pœna ad paucos, metus ad omnes perveniat, &c. Co. ibid. a. 4. in *Beverleys* Case.

Upon an Arrest, the cause must be shewn.

20 The Law so provideth for the preservation of a mans liberty, that no generall arrest is deemed legall without shewing the particular cause wherefore he is arrested; And therefore the Sheriffe or any other by his authority which makes an arrest of the person of another, ought upon the arrest to shew at whose suit out of what Court, for what cause he doth it, and when the processe is returnable to the intent that, if it be upon an execution, he may pay the money, and so free his body from imprisonment: and if it be upon a meane processe, may either agree with the party, or put in baile according to the Law, and so make his appearence accordingly, &c. Co. l. 6. 54. a. 4. in the Comdesse of *Rutlands* Case.

The Coll. of Phys. cannot commit

21 An Act of Parliament, that giveth power of imprisonment ought to be strictly interpreted, to preserve (as much as may be) the liberty of the subject: So the Act of 14 H. 8. cap. 5. which gave power to the President and Comitia of the Colledge of Physicians in London to imprison, was so strictly and literally to be understood, that the Gaoler was not thereby bound to receive such as they should commit unto him; because there was no clause in that Statute to give him power so to do; And therefore was the Statute of 1 Mar. cap. 9. made, which commands the Gaoler to receive them upon a penalty, &c. And yet the receit of the Gaoler (in that case) seemes to be a necessary incident to the power given them to imprison; but in regard it concernes the liberty of the subject, and they had not the authority of any Court to commit any; the Gaoler could not receive such as they should commit without an especiall provision by Act of Parliament for that purpose, &c. Co. lib. 8. 120. a. 3. Doctor *Bonhams* Case.

Statutes that encroach bridge liberty to be strictly interpreted.

22 A Mayor and Comunity, &c. may make by Laws and Constitutions for the good ordering of their Corporation, &c. and may inflict a reasonable pecuniary penalty for the due observing thereof to be levied Co. lib. 5. 64. *Clerks* Case. Et Co. l. 8. 127. b. 1. in the city of *Londons* Case.

Constitution, upon penalty of imprisonment.

levied by diſtreſſe, or recovered by Action of debt, &c. But they cannot inflict penalty of impriſonement: for ſuch a Conſtitution or Ordinance, which trencheth upon the liberty of the ſubject, is not favoured in Law, and beſides it is expreſſely againſt the letter of Magna Carta c. 29. Nullus liber homo impriſonetur, &c.

Impriſonment for malitious fact, that concernes life.

Co. l. 3. 60. a. 3. in *Beechers* Caſe.

23 In an Appeale of Death, Robbery, or any other Appeale of Felony or of Mayhem, If the Plaintiffe be barred, or non-ſuit, or if the Writ abate by his owne default, he ſhall be fined and impriſoned, 8 H. 4. 17. 20. for the malice is more venomous, which concernes life and member.

A Capias in *Withernam* to releive a priſoner.

F. N. B. 68. c.

24 In a Homine replegiando if the Sheriffe return, that the Defendant hath eloigned the body of the Plaintiffe, ſo that he cannot make deliverance, &c. Then the Plaintiffe ſhall have a Capias in Withernam to take the body of the Defendant, and ſhall detaine him, &c. until, &c. be he Peere of the Realme or other common Perſon: And if the Sheriffe return non eſt inventus, upon that Capias in Withernam of the Body, then ſhall the Plaintiffe have a Capias in Withernam of the goods of the Defendant, &c. And this is in favorem libertatis.

But two Villeins ſued, &c. more may ſue, &c.

F.N.B. 78 c.d.

25 If a man ſue ſpeciall Writ de Nativo habendo againſt two, the two may ſoine in a Writ De libertate probanda notwithſtanding theſe ſeverall Writs: And a man ſhall not ſoine above two Villeins in a Writ De nativo habendo: But more may ſoine in a libertate probanda; And that is in favorem libertatis.

Enfranchiſment upon contempt or Retraxit.

F.N.B. ibid. f.

26 In a Writ De nativo habendo if the Plaintiffe after apperance departs in diſpite of the Court, or ſaith he will fetch his Counſel, and after being demanded makes default; In theſe Caſes the Villein ſhall be Enfranchiſed for ever: So alſo ſhall he be upon a Retraxit, when the Plaintiffe ſaith he will purſue his Writ no farther, cauſa qua ſuprà. &c.

A Nicke ſee by marriage of a Free-man.

F.N.B. ibid. g.

27 If a Free-man marry a Neife, ſhe ſhall be free for ever, albeit the Baron die and ſhe ſurvive, And this (as Fitz notes out of Bracton) is in favorem libertatis, for a Free Woman ſhall not be a Villein by taking a Villein to Husband.

No *monſtravit* if the accomptant hath lands.

F. N. B. 99. d.

28 If a man ſue a Writ of Monſtravit againſt a Bailiff upon the Statute of Malbridge cap. 23. with purpoſe that the Sheriffe ſhould attache his Body to bring him to accompt, when as he hath ſufficient Lands in another County, by which he may be made to anſwer by Writ of Accompt: In that Caſe, the Defendant ſhall have a Writ of diſceit againſt the Plaintiffe that ſues the Monſtravit; for ſo long as he hath lands, his body in that caſe ought not to be attached.

Confeſſion a Felon not taken.

Finch 29.

29 If a Man for Feare, or in Simplicity will Confeſſe himſelfe guilty of a Felony, yet the Judge muſt not Record that Confeſſion, but ſuffer him to plead not guilty, And that is in favorem vitæ.

A Feme *De facto* ſhall not bring an appeal.

Co. Inſt. p. 1. 33. b. 1.

30 A Feme, if ſhe be married, is either a Wife De facto, or De Jure; De facto, until both of them have attained the yeares of Conſent (viz. 24 for the Man, and 12 for the Woman) De Jure, when at thoſe ages, they have not diſſented: Now, albeit a Wife De facto onely, who is nine yeares old at her husbands death (though he be but foure yeares old, when he dies) ſhall be endowed; yet (as ſome hold) ſuch a Wife De facto ſhall not have an appeale of the death of her Husband, but onely ſhe that is a Wife De Jure, and that is in favorem vitæ.

wardship. marriage.

31 Wardship hath been always (especially of late times) accounted a thing of slavery, and therefore it was always in the old Books a Maxime in Law, quod dominus non maritabit infantem in custodia sua nisi semel, and Glanvil saith, si semel legitimè nupti fuerint, &c. postmodum non tenebuntur sub custodia Dominorum esse. And therefore if the Guardian marry his Ward under the age of 14 years, and at that age he dissent as he may, he shall marry him no more, being thereby freed as to the wardship of his body: So it is also, where the Lord marries him to a woman, and the marriage is after avoided by reason of a pre-contract; It is otherwise where the ravisher marries him within age, and he dissent at 14, for in such Case, the Lord shall have the marriage of him. Vide Fl. ibid.

Co. ibid. 79. b Litt. § 105. Brit. 169. Glanvil, lib. 7. cap. 12.

Clergy.

32 Clergy was allowed to the accessary to the stealing of Horses and Sheep, because the Statutes of 1 E. 6. 12. and 2, 3 E. 6. 33. shall be taken strictly in favorem vitæ, and are therefore to be onely understood of Principals, which they expresly mention, and not of Accessaries, per Cur.

Dier. 99. a. 59. 1 Mar.

Clergy.

33 Albeit it be entred upon Record at one Sessions, quod non legit, and the prisoner is to some sanè replevied, yet he may read at the next Sessions, and shall have his Clergy, in favorem vitæ, Vide 36 H. 6. that a Prisoner shall have his Clergy under the Gallows.

Dier. 105. b. 3. 4 M.

Life & goods.

44 If two men fall before the King, or two Fencers of Defence be playing their Prizes, and one of them happen to kill the other, this is not Felony, because not done animo felonico, and besides, if it should be questioned as an Offence, the life of the Offender (which the Law much tenders) would be brought into jeopardy; there is the same Law also of a Lunatique, that kills a man: Howbeit in Trespasse, which intends onely to give damnages, according to hurt and losse, it is not so: And therefore if a Lunatique hurt a man, he shall be answerable in Trespasse: So likewise, if in training for exercise in re militari, one Souldier happen to hurt another, he shall be answerable in Trespasse, because it extends no farther then to his goods to satisfie damnages; yet if the accident were inevitable, he shall be excused, &c.

Hob. 134. *Weaver* and *ward.*

93 Things in the Realty more then those in the Personalty.

Juwle, the plea waived since notwithstanding the damnages.

1 It hath been a question, whether upon a Recovery had by default in an Action of Waste against tenant in Dower, or by the Courtesie, a Quod ei deforceat lieth upon the Statutes of West. 2. cap. 4. And some hold, that it doth not, in regard the damnages (as they say) are the principal, and not the place wasted, because the damnages were recoverable upon that action against such Tenants at the Common Law, and the place wasted was afterwards given by the Statute of Gloucester, as a penalty: so as the nature of the Action (say they) remaineth still to be personal, for that the damnages are the principal, &c. But in that Case, others are of opinion, and say, that albeit in that Action the damnages may be the more ancient recompence, yet the place wasted (being of the realty) must needs be the more principal: And therefore upon a Recovery by default in such an action, a Quod ei deforceat lieth as well as in any other, &c. And this last seems to be my Lord Cooke's opinion, because put last, according to his own Rule, in his Comment upon Littleton.

Co. Inst. p. 1. 355. a. 4. &c. Note, that it is holden *per Curiam* 9 H. 5. 15. that the personalty is the principal, *Idee quære. Vide* Co. l. 2. 68. b. 1. in *Tookers* case.

Lien real & personal.

2 There is a diversity between a Lien real and a Lien personal; for a Lien real, as a Warranty, doth ever relate to the best of the Common Law; but the Lien personal only binds the Specialty heirs, as all the heirs in

Co. lib. 386. b. 3 & 11. E. 3. *dec.* 7.

in Gavelkind, the heir on the part of the mother, &c. when such an heir being charged by the Obligation or other act of the Ancestor, is in by descent, &c. So if two men make a Feoffment in Fee with warranty, and the one die, the Feoffee cannot vouch the survivor only, but the heir of him that is dead also: Howbeit it is otherwise, where two do jointly bind themselves in an Obligation; for if one die, the survivor onely shall be charged, &c.

Release of one Joynt-tenant no Bar.

3 In personal actions, the one Joynt-tenant may release all; but if the personalty be mixed with the realty, it is otherwise; as in an Assise by two, the release of all actions personal by the one, is no bar against the other; for albeit an Assise is an action mixt in the realty and personalty, yet omne majus trahit ad se minus, as it is adjudged 30 H. 6. Bar. 191. Also a Joynt-tenant shall not prejudice his Companion, as to any matter of Inheritance of Frank-tenant; but as to the profit of the Frank-tenant, the one may prejudice the other; for there is a privity and trust betwixt them; and therefore if one of them take all the profits of the Land, or all the Rent, the other hath no remedie, &c. Co. Lit. 68. a. in Tookers case per Popham.

Things in the Realty may be intailed, not those in the Personalty.

4 By force of the Statute of West. 2. cap. 1. (which greatly effates tail) under this word, tenementa, not onely all corporate Inheritances (which are or may be holden) may be intailed, but also all Inheritances issuing out of any of those inheritances, or concerning, or annexed to, or exercisable within the same, though they lie not in Tenure; as Rents, Estovers, Commons, or other profits whatsoever granted out of land; or Iles, Offices, Dignities, or which concern lands or certain places; All these (I say) may be intailed within that Statute, because they savour of the Realty: But if the Grant be of an Inheritance meer personal, or to be exercised about Chattels, and is not issuing out of land, nor concerning any land, or some certain place, such Inheritance cannot be entailed, because they savour nothing of the Realty: For example, in 7 Ass. Pl. 12. and 7 E. 6. 1. the Office of the fourth part of the Serjeant of the Common Pleas is liberum tenementum, and therefore may be entailed: In 38 E. 3. 27. the Office of the keeping of the Church of our Lady of Lincoln was intailed, and a Formedon brought thereupon by the issue intail. In 5 E. 3. and 10 E. 4. The Office of Pardon of England was intailed. In 11 E. 4. 1. the Office of one of the Chamberlains of the Exchequer intailed. In 5 H. 7. 28. the Office of a Fostership intailed: In 4 H. 7. 10. and 9 E. 4. 56. b. Charters intailed. In 19 H. 8. 3. An Isle intailed. In 1 H. 5. 1. The nomination to a Benefice intailed, &c. Also the name of Dignity may be intailed within that Statute, as Dukes, Marquesses, Earls, Viscounts and Barons, because they are named of some County, Manor, Town, or place: In 14 Ass. Pl. 2. if the issue in tail in a Formedon in a Descender be barred by false Verdict, his release is no bar to his issue, albeit the action is at the Common Law: The like Law is of a writ of Error, 2 Eliz. Dier. 188. If a gift in tail be made with warrantie, the Donee releases the warranty, this shall not binde the issue in tail; for to all these Cases and the like the said Statute doth extend: But if I grant to a man, and to the heirs of his body to be Keeper of my Hounds, or Master of my Horse, or to be my Falconer, or the like, with a fee thereunto; yet these cannot be intailed within the said Statute: for that they be not issuing out of Tenements, nor annexed to, nor exercisable within, or concerning Lands or Tenements of Freehold or Inheritance, but concerning Chattels, and savour nothing of the realty: So it is likewise if I, by my Deed, for me and my Heires, grant an Annuity to

Co. Inst. p. 1. 19. b. 4.

Co. 1. 7. 33. 34. Nevils Case, & 28 H. 6. the Lord Vesys Case.

a

a man and the Heires of his body, because this onely chargeth my Person; and concerneth no Land, nor savoureth of the Realty.

5 If a Feme sole be possessed of an Estate for years, or by Statute Marchant, Statute Staple, or Elegit, or of a wardship, or other chattels real, and taketh Baron, the Baron is thereof possessed in her right onely. And albeit during the Coverture he may dispose of such an Estate by Grant, Demise, &c. or upon Out-lawry, Attainder, &c. may forfeit it, or may subject it to be sold by the Sheriff upon an execution for his Debt, and in Case he survive the Feme, shall then have a clear interest in it; yet he cannot dispose of such an Estate by Will, and if he survive him, (no disposition or forfeiture being thereof made, as aforesaid) he shall have it, and not his executors or administrators; because these Estates and Interests savour of the realty: and therefore the Feme being thereof once possest, her interest cannot be by the Inter-marriage so easily removed, as if they were Chattels personal: There is the same Law also of Chattels real, which being of a mixt nature. (viz. partly in possession, and partly in action) happen during the Coverture; As if the husband be seised of a rent-service, charge, or seck, in the right of his wife, the rent becomes due, during the Coverture, the wife dieth, the husband shall have the arrerages; but if the wife survive the husband, she shall have them, and not the executors of the husband: So it is also of an Advowson, if the Church become void, during the Coverture, he may have a *Quare Impedit* in his own name, as some hold; but his wife shall have it, if she survive him, and the husband, if he survive her, Et sic de similibus. But as concerning Chattels personal, the inter-marriage is an absolute gift of such goods, which the hath in possession, and in her own right, whether the husband survive the wife or no, so that he may at his pleasure dispose of them, either by act execute in his life, or by will; and albeit he make no such disposition of them, and die living the wife, yet his Executors or Administrators shall have them and not the wife, &c. Howbeit if they be in action, as Debts by Obligation, &c. the husband shall not have them, unlesse recovered during the Coverture; neither yet shall he have such goods, as the wife hath in auter droit, as Executrix or Administratrix, &c. Vide R. 55. ex. 129.

Co. Inst. p. 1. 351. 185. b. 3. 299. b. 4. and 46. b. 2.

6 If one Tenant in Common of Chattels take any Chattels real, (which are not of an intire nature) from his companion, the other may have his remedy to recover them by Action; but if one of them take all the personal goods from the other, he hath no remedy by Action or otherwise, save onely to take them again by Catch-pole Law: And so it is also of intire Chattels real, as a Ship, Horse, Hawk, or the like: but that is in respect of the Intirenesse and inseverablenesse of their nature, &c. for which see R. 70. ex. 25.

Co. lib. 100. a. 2

7 It is said in our Books, that Accord with satisfaction is a good plea in personal actions, where damages onely are to be recovered, but not in real Actions; For a right or title to any Estate of Inheritance or Freehold cannot be barred by acceptance of any collateral satisfaction or recompence; As if A. disseise B. (tenant for life, or in Fee) of the Mannor of Dale, & after A. gives the Mannor of Sale to B. and his Heires, in full satisfaction of all his rights and actions, which he hath in or for the Mannor of Dale, and B. accepts thereof: Nevertheless B. may enter into the Mannor of Dale, or recover it in any real action; it is otherwise of things in the personalty.

Co. l. 4. 1. a. 4 in *Vernons* case.

Dier. 2. 8. 6 H. 8.

8 In real Actions to plead, that the Plaintiff is an Alien is a good bar, because an Alien can have no land within the Realm, but such a Plea in personal Actions is no bar; because an Alien may bring personal Actions, unleſſe he be an Alien Enemy. Alien. Actions.

Co. l. 6. 7. a. in *Ferrers* Caſe.

9 Betwixt real and personal Actions there is a diverſity: for in personal Actions, as in Debt, Account, &c. the bar is perpetual; because (in such Cases) a man shall not have an Action of a higher nature: But in a real Action, if the Demandant be barred by judgment upon Verdict, Demurrer, Confeſſion, &c. yet he may have an Action of a higher nature, and shall try the same right again, because it concerns his Frank-tenement and Inheritance: So if a man be barred in Aſſiſe of Novel diſſeiſin, yet upon shewing a deſcent, or other ſpecial matter, he may have an Aſſiſe of Mordancestor, Aiel, Beſaiel, &c. Vide infrà 1, 78, 14. Bar in perſonal actions binds not ſo in real.

Litt. §. 146. Co. Inſt. p. 1. 103. a. 2.

10 An Abbot, Prior, Biſhop, or other ſole Corporation cannot diſclaim or deveſt any thing of Fee, which is veſted in their houſes, or other ſpiritual Corporations, to the prejudice of the Succeſſor: Howbeit, if an Abbot or Biſhop, &c. acknowledge the Action in a writ of Annuity, or in an action of Debt upon an Obligation, Statute or Recognizance; this shall binde the Succeſſor, ſo as he shall not prevent execution thereupon, albeit they were granted and made without the conſent of the Covent, Chapter, &c. because theſe things being in the perſonality, the recovery thereof cannot be falſified in an higher action, Et res judicata pro veritate accipitur, Vide ſupra, M. 1. cap. 4. Succeſſor of an Abbot, &c. bound.

Co. ib. 125. b. 3

11 In a Plea real againſt divers tenants, if one tenant plead in barre to parcel, or which extendeth onely to him that pleadeth it, and the other pleads a Plea, which goeth to the whole (viz. to both the tenants) and which (indeed) would make an end of the buſineſs, if it were tried, yet theſe ſeveral Pleas shall have ſeveral trials; as if a præcipe be brought by one as heir to his father againſt two, and one of them pleads a Plea, which extendeth but to himſelf, and the other pleads a Plea, which extends to both, (as Warrantie in the Demandant) and it is found for him, yet the other iſſue muſt be tried, and he shall not take advantage of the others Plea: But in a Plea perſonal againſt divers Defendants, it is otherwiſe, for in ſuch an action if one Defendant pleads that, which extendeth onely to himſelf, and the other pleads a Plea which goeth to the whole, viz. to both Defendants; this laſt Plea shall be firſt tried; and if that be found for the Defendant that pleades it, it shall diſcharge both, for in a perſonal Action a Diſcharge of one is a Diſcharge of both: For example. If one of the Defendants in Treſpaſſe plead a Releaſe to himſelf (which in Law extends to both) and the other pleads not guilty (which extends but to himſelf) the Plea which goeth to the whole, and diſchargeth both, shall be firſt tried, for if that be found, it maketh an end of all, and the other shall take advantage of it. Pleas real and perſonal.

94 Freehold and Inheritance more then is doth Chattels.

Co. Inſt. p. 1. 3. a. b.

1 The Pariſhioners or Inhabitants, or probi homines de Dale, or the Church-wardens, &c. are not capable to purchaſe Lands, unleſſe it Pariſhioners purchaſe.

it were in ancient time when such Giants were allowed; But Goods and Chattels they may purchase, &c.

Seigniories suspended.

2 If an Estate of Freehold in Seigniories, Rents, Commons, or the like, be suspended, a man shall not be tenant by the Courtesie; but if the suspension be but for years, he shall be tenant by the Courtesie: As if there be Feme, Seigniorelle, and Tenant, and the Tenant makes a Lease for life of the Tenancy to the Seigniorelle, who taketh an husband, and hath Issue, the wife dieth, he shall not be tenant by the Courtesie; Howbeit if the Lease had been made only for years, then should he have been tenant by the Courtesie, &c. Co. lib. 29. b. 2.

Estate for life and years.

3 In the eye of the Law any estate for life, being (as Littleton saith) an Estate of Freehold against the tenant, whereof a Præcipe quod reddat doth lie, is an higher and greater estate then a Lease for years, though it be for a thousand years or more (which is a Chattel; and if so long, never without suspicion of fraud.) And they have been always the lesse valuable, for that (at the Common Law) they were subject unto, and under the power of the Tenant of the Freehold, &c. Co. ibid. 46. a. 1 & Co. l. 8. 70. b. 4. in *Whitlocks* Case.

Claim by the Lord of the Villeins goods

4 Claim by the Lord (inter vicines, &c.) of the Villeins goods, shall not onely vest the goods, which the Villein then hath, but also which he after that shall acquire and get: Howbeit it is otherwise, if an Estate of Free-hold, or Inheritance in lands, for there such a general Entry or Claim extends onely to such lands as the Villein hath at that time, and not to any other, which he shall purchase afterwards. Co. lib. 118. b. & and Litt. §. 177.

Rent

5 If a man grant a Rent out of Black-Acre to one and to his heires, and also grant to him that he may distrain for it in the same Acre for the term of his life, this is a Rent-charge for his life, and a Rent-seck afterwards; diversis temporibus; but if the Distresse be onely limited for certain years in the same land: In that Case it remains a Rent-seck intirely; for that the Fee and the Freehold is seck in such Case, &c. Co. lib. 147. b. 1 & Co. l. 7. 24 a. b. 3. in *Bates* ca.

Joynt-tenants Partition.

6 At the Common Law (before the Statutes of 31 H. 8. cap. 1. and 32 H. 8. cap. 32.) Joynt-tenants by consent might have made partition, and if they had been possest of a Lease for yeares, they might have done it by Parol, but if they had been seised in an Estate of Inheritance, or for life, they could not have make partition without Deed. Litt. §. 290. Co. ibid. 187, a. 1.

Words conditional to make a Lease void.

7 If a man maketh a Feoffment in fee, or Lease for life, ad faciendum, or faciendo, or ea intentione, or ad effectum, or ad propositum, &c. that the Feoffee or Lessee shall do, or shall not do such an Act, none of these words make the state in the land conditional; for (in the Case of a common person, and not of a will) they are in judgment of Law no words of Condition, and so it was resolved, H. 18 Eliz. in Com. Banco: Howbeit for the avoiding of a Lease for years, no such precise words of condition are required, as in Lease of Freehold or Inheritance; for, if a man by Deed make a Lease of a Mannor for years in which there is a clause, (And the said Lessee shall continually dwell upon the Capital Messuage of the said Mannor, upon pain of forfeiture of the said Term) these words amount to a Condition: So it is also if such a Clause be in such a Lease, *Quod non licebit* to the Lessee, dare, vendere, vel concedere Statum, & sub pœna forisfacturæ, this amounts to make the Lease for years defeasible: And so it was also adjudged, H. 40. Eliz. Rot. 1610. inter Brown & Ayel. And the reason of the Court was, because a Lease for years was but a Contract, which may begin by word, and by word may be dissolved. Co. lib. 204. a. 4

Litt. §. 365. Co. ib. 225.

8 A man in any Action real, personal, or mixt, cannot plead, that an Estate of Freehold or Inheritance was made upon condition, without vouching a Record thereof, or shewing a writing under seal, that proves the same; but a man may plead a condition, that concerns Chattels either real or personal, without shewing forth any writing purporting the same, &c. Pleading of Condition.

Littlet. § 388. Co. ib. 239. b. 2

9 If a Disseisor make a Lease for years, and die seised of the Reversion, this descent shall take away the entry of the Disseisee; because he died seised of the Fee and Frank-tenement: like Law it is, if the Land be extended upon a Statute, Judgement, or Recognizance: and so it is likewise in case of a Remainder: Howbeit, if he had made a Lease for life, either for his own, or for another's life, and then had died seised of the Reversion, this descent shall not take away the Entry of the Disseisee; for albeit he had the Fee, yet he had not the Frank-tenement; and the Law doth ever give great refpect to the Estate of Freehold, though it be but for term of life; And therefore there is the same Law also, where the Disseisor makes an Estate in tail, mutatis mutandis. Discent a no entry

Lit. § 525, 526 Co. ib. 244. b. 4

10 If I let Land to a Feme sole for life, who takes Baron, and after I confirm the Estate of the Baron and Feme to have and to hold for their two lives: In this Case, the Baron holds not jointly with the Feme, but onely in her right, during her life, and shall have it for life, if he survive her: But if I let to a Feme sole Land for term of years, who takes Baron, and I confirm the Estate of the Baron and Feme to have and to hold for their lives: In this Case, they have a joynt Estate in the Frank-tenement of the land; because the Feme had not Frank-tenement before, but onely a Chattel, whereof the Baron hath such a possession in her right, as was capable of a confirmation or a release; and the confirmation in this Case to the husband and wife for their lives, maketh them Joynt-tenants for life: because this Chattel of the Feme covert may be drowned; So note a diversity between a Lease for life, and a lease for years, made to a Feme covert; for her Estate of Freehold cannot be altered by the confirmation made to her husband and her, as the term for years may, whereof the husband may make disposition at his pleasure. Joynt confirmations to Baron and Feme

Co. ib. 275. b. 4.

11 If Lessee for years be ousted, and he in the Reversion disseised, and the Lessee release to the Disseisor, the Disseisee may enter; for the term for years is extinct and determined: But otherwise it is in case of a Lease for life; for (in that Case) the Disseisor hath a Freehold, whereupon the release of tenant for life may inure: but the Disseisor hath no term for years, whereupon the release of the Lessee for years may inure. Release to the Disseisor.

Co. ib. 378. a. 4

12 A man letteth lands for life, upon Condition to have Fee, and warranteth the land in forma prædicta, afterwards the Lessee performeth the Condition, whereby the Lessee hath Fee: In this Case, the warranty shall extend and increase, according to the Estate; for a warranty being a Covenant real annexed, may attend to an Estate in futuro, having an Estate whereupon it may work in the beginning: but if a man grant a Seigniory for years, upon condition to have fee, with a warranty in forma prædicta, and after the Conditions performed, this shall not extend to the fee, because the first Estate was but for years, which was not capable of a warranty: And so it is, if a man make a lease for years, the remainder in Fee, and warrant the land in forma prædicta, he in the remainder cannot take benefit of the warranty, because he is not party to the Deed, and immediately he cannot take, if he were party to the Deed; because he commenced after A Lease for years not capable of a warranty.

after the habendum, and the Eſtate for years is not capable of a warranty, &c.

nſtſe.

13 A Leaſe for life, the remainder for years, the remainder over in Fee, an action of Waſte lieth for him in the remainder in Fee againſt the Leſſee for life; for the mean Eſtate for yeares is not regarded: Otherwiſe it were, if the mean Eſtate for years were an Eſtate for life, &c. Finch 29.

ynt-tenants ny prejudice e another.

14 One Joynt-tenant cannot prejudice his Companion, as to any matter, that concerns the Inheritance or Frank-tenement; But as to the profits of the Frank-tenement they may prejudice one another, &c. per Popham. Co. l. 2. 68. a. 3. in Tookers ca.

ght of Acti-

15 There is a diverſity between Inheritance and Chattels, for the right of action concerning Inheritances is not forfeited by Statutes, &c. but Obligations, Detinues, Recognizances, &c. and ſuch other things in action are forfeited by Attainder or Outlawry. Co. l. 3. 3. a. 1 in the Marqueſſe of *winchesters* Caſe.

Real and perſonal actions.

16 The Law hath provided greater ſafety and remedy for matters of Frank-tenement and Inheritance, than for Debts and Chattels; for there one hath, and ever hath had; for in perſonal actions, as in Debt, Accompt, &c. the bar is perpetual; becauſe the Plaintiff (in that Caſe) cannot have an Action of an higher nature, but his onely remedy (in ſuch Caſe) is by Errour or Attaint: Howbeit if the Demandant be barred in a real Action by judgement upon Verdict, Demurrer, Confeſſion, &c. yet he may have an Action of higher nature, and try the ſame right again, becauſe it concerns the Frank-tenement and Inheritance; as if one be barred in an Aſſiſe de novel diſſeiſin, yet he may have, upon ſhewing a deſcent, or other ſpecial matter, an Aſſiſe of Mortdancestor, Aiel, Beſaiel, Entry ſur diſſeiſin, to his Ancestor, &c. And a man be barred in a Formedon in deſcender, he may have a Formedon in reverter or remainder, for that is an Action of an higher nature, becauſe in it the Fee ſimple is to be recovered according to the opinion in Robinſons Caſe in the 5. Report, fol. 33. Co. l. 6. 7. a. 1 in *Ferrers* Caſe.

Lands not chargeable in execution.

17 At the Common Law before the ſtatute of Weſt. 2. cap. 18. (which gave an Elegit againſt the moity of the Debtors Lands) upon a Recognizance or Judgment ſued, lands were not chargeable in execution, but onely Goods and Chattels, or elſe grain or other preſent profit increaſing upon the land, viz. Goods and Chattels by Fieri facias and ſuch preſent profit by Levari facias, &c. (Vide ſupra, Ru. 92. ex. 16.) Howbeit in the Kings Caſe, by reaſon of his Prerogative, and in Caſe of an Heir, in by Deſcent, and chargeable by the act of his Ancestor, &c. (becauſe otherwiſe (in ſuch Caſe) the Creditor was without remedy, &c.) lands were chargeable in execution, &c. Co. l. 3. 11. b. 4 in Sir *wil. Herberts* caſe.

ſign by a ter-or not good.

18 A man deviſeth a rent for life out of a Manor, and deviſeth the Manor for years, the terme enters, and pays the rent, after the terme, the Deviſee brings an Aſſiſe for the rent againſt the Terre-tenant: Now in this Caſe leſſee by the hands of the Terme was adjudged no ſufficient action, whereupon to ground the Aſſiſe, but the leſſee ought to have been given by the hands of the Terre-tenant, viz. the tenant of the Frank-tenement, &c. (Vide ſupra, Ru. 86. ex. 21.) It had been otherwiſe, if the leaſe for years had been a leaſe for life; for then the leaſe had been given by the hands of the Terre-tenant, viz. of one that had Frank-tenement, as may be collected out of Bredimans Caſe, ubi in margine, viz. fol. 58. b. Co. l. 6. 58. b. 4 in *Bredimans* Caſe.

Grantee of a Reverſion: Condition.

19 If a man make a Leaſe for years, upon condition, that if the Leſſee doth not ſuch an act, that the Leaſe ſhall be void, and after the Leſſor grants the Reverſion over, the condition is broken, the Grantee ſhall Co. l. 8. 95. b. 3 in *Matt. Mannings* Caſe. & Co. l. 10. 48. b. 3 in *Lampets* ca.

ſhall take advantage of that Condition by the Common Law; for the leaſe is thereby abſolutely void: But if a leaſe for life had been made upon ſuch Condition, the grantée ſhall not take benefit of the breach of the Condition: becauſe a frank-tenant (whereof a præcipe lies) cannot ſo eaſily ceaſe, but it is voidable by entry after the Condition broken, which cannot by the Common Law be transferred to a ſtranger, &c. and with this agrees 11 H. 7. 17. & Br. Condit. 245. 2. Mar. per Bromley Rule 27.

Co. l. 9. 135. a 1 in *Aſcoughs* Caſe. Seigniory. Attornment. Leſſee for for yeares.

20 If the Lord grant his Seigniory for yeares, the remainder to the Tenant peravaile for life, in this Caſe the Seigniory is ſuſpended: becauſe the Tenant for life hath the frank-tenement of the Seigniory, and he is Tenant to every præcipe of the Seigniory: as in the Caſe of Littleton l. 2. cap. Attornment, fol. 128. If land be let to a man for term of yeares, the remainder to another for term of life, and after the Leſſor grants over the reverſion, and he in the remainder for life attornes, this is a good attornment, and ſhall binde the Leſſée for yeares without any attornment made by him: For, he was Tenant of the frank-tenement: and at the Common Law the termor for yeares was ſubject and under the power of the Tenant of the frank-tenement: for he ſhall not ſaiſine a recovery at the Common Law againſt the Tenant of of the frank-tenement, becauſe he hath but a Chattel, &c.

Co. lib. 10. 48. b. 3. in *Lampets* Caſe. Frank-tenant cannot drown in a Chattel.

21 If Leſſée for 1000 yeares be ouſted by the Leſſor, and he maketh a leaſe for 2 yeares to another: In this Caſe, the Leſſée for 1000 yeares may releaſe to the Leſſée for 2 yeares: but if the Leſſor diſſeiſe his Leſſée for life, and make a leaſe for 1000 yeares, yet the Leſſee for life cannot releaſe to that Leſſée for yeares: becauſe a frank-tenement is too high to be drowned in a Chattel.

Co. lib. 10. 87. a. 4. in *Leonard Loveis* Caſe. A term ſhall go to the Executors.

22 If a term be deviſed to one and to the heires males of his body, his heire ſhall not have it, but his Executors; for the term, which is but a Chattel, cannot be entailed, and ſuch a deviſée may alien the term to whom he pleaſeth: and ſo it was adjudged, Tr. 28 Eliz. in B. R. in Peacocks Caſe, and 21 Eliz. reſolved by Anderſon and Walmeſly, being referred unto them out of the Chancery betwéen Higgins, and Milles. *See* alſo Dier 7. 28 H. 8. Pl. 8.

F. N. B. 34. f. Court Chriſtian.

23 If a man make a deviſe of lands or Tenements, the deviſée ſhall not ſue for them in the Eccleſiaſtical Court, and if he do, the other party ſhall have a prohibition: Otherwiſe it is of perſonal goods, and alſo of Chattels real, as a term of yeares, a ward, &c. for, for ſuch, the deviſée may ſue in that Court, &c.

Co. l. 3. 26. a. 3. &c. in *Butler & Bakers* Caſe. Diſclaim in *pais* of intereſt in goods, ſo of freehold.

24 An Eſtate of Inheritance or free-hold cannot be put out of a man by any verbal waiver, diſclaimer or diſ-agréement in pais, or otherwiſe then in Court of Record: but a man may diſclaime or diſ-agrée to Intereſt in Chattels in pais and no ſuch diſ-agréement in a Court of Record is (in that Caſe) neceſſary: For example, If Lands be given to Baron and Feme in taile or in fée, the Baron dies, the Feme (in this Caſe) cannot divеſt the frank-tenement out of her, by ſaying, ſhe diſ-agrées to the grant, or that ſhe will have nothing to do with the land, ſo if the Baron aliéna his land, and takes again an Eſtate to him and his wife in taile, the Baron dies, the Lord of whom the land is holden by Knight-ſervice, ſuppoſing that the Baron died ſoiely ſeiſed, by parol aſſignes dower to the Feme, which ſhe accepts: yet this refuſall of the Inheritance, and acceptance of the Dower in pais ſhall not divеſt the frank-tenement out of her: Likewiſe, if a Charter of feofment be made to four, and ſeiſin delivered to three in the name of all, and after the ſeiſin delivered the fourth comming and ſeeing the déed, diſ-agrées to it and

and ſaith he will have nothing to do with the land; yet it was adjudged in 13 R. 2. Title Jointenance, that this diſagreement by parol in pais could not diveſt the frank-tenement out of him. And Thorpe in 51 E. 3. Tit. Diſclaimer, ſaith, that in ſuch Caſe the tenancy remaines in all, until diſagreement in Court of Record: But if A. make an Obligation to B. and deliver it to C. to the uſe of B. this is the deed of A. preſently; Howbeit if C. offer it to B. there B. may refuſe it in pais, and by ſuch refuſal the Obligation ſhall be of no force: There is the ſame Law of a gift of goods and Chattels, if the deed be delivered to the uſe of the Donée, the goods and Chattels are immediately in the Donée before notice or agreement: but the Donée may make refuſal of ſuch gift in pais, and thereby the property and Intereſt ſhall be diveſted, and ſuch diſagreement is not neceſſary to be made in a Court of Record, as in Caſe of a free-hold, &c.

ondition to void.

25 There is a diverſity betwixt a Condition annexed to a free-hold and a Condition annexed to a leaſe for yeares; for if a man make a gift in taile or a leaſe for life upon Condition, that if the Donée or leſſée goeth not to Rome before ſuch a day, the gift or leaſe ſhall ceaſe or be void, the grantée of the Reverſion ſhall never take advantage of this Condition: becauſe the Eſtate cannot ceaſe before an entry: but if the leaſe had been but for yeares, there the grantée ſhould have taken advantage of the like Condition: becauſe the leaſe for yeares ipſo facto by the breach of the Condition without entry was void: for a leaſe for yeares may begin without Ceremony, and alſo may end without Ceremony: And of a void thing a ſtranger may take benefit, but not of a voidable Eſtate without entry. Co. Inſt. p. 1. 214 b. 3.

ſue iſſuing out of fee and free hold.

26 A man ſeiſed of Black-acre in fée, and poſſeſt of White-acre for yeares, grants a Rent charge for life with clauſe of diſtreſſe in both: In this Caſe, the Rent iſſues onely out of Black-acre: for out of White-acre in regard of the meaneſſe of the Intereſt thereof, a frank-tenement cannot iſſue: neither ſhall it be put in view, and acceptance of the Leaſe of White-acre by grantée of the Rent ſhall not ſuſpend the Rent, &c. Co. 7. 23. a. *Buts* Caſe.

iverſity betwixt leaſe & free-hold.

27 If a man make a Leaſe for yeares upon Condition, that if he do not ſuch an Act the Leaſe ſhall be void, and afterwards he grants the reverſion over, the condition is broken, the grantée ſhall take benefit of this Condition by the Common Law, for the leaſe is thereby abſolutely void: but if the leaſe had been for life with ſuch Condition, the grantée ſhall not take benefit of the breach of the Condition: for a Frank-tenement (upon with a præcipe lies) cannot ſo eaſily determine, but is voidable by entry after the Condition broken, which cannot be by the Common Law transferred to a ſtranger. Co. l. 8. 95. b. 3. *Mathew Manwings* Caſe.

ſe-ſeaſons. maps in mmon.

28 If Lands be given to John Biſhop of Norwich and his Succeſſors, and to John Overall Doctor of Divinity and his heires, being one and the ſame perſon, he is Tenant in Common with himſelfe; but it is otherwiſe of Chattels real or perſonal; for if a Leaſe for yeares be made or a ward granted to an Abbot and a ſecular man, or to a Biſhop and a ſecular man, or if goods be given to them, they are joynt-tenants thereof, and not tenants in common: for they take them in their natural, and not in their politique capacity. Co. Inſt. p. 1. 190. 4.

ant of a re-ſion, for hes good hout Attornment.

29 Grant of a Reverſion of free-hold is not good without attornment but if a man make a leaſe for yeares rendring Rent, and afterwards makes a Leaſe of the ſame land to another to commence during the firſt term, this is a good grant of the reverſion, and he ſhall have the Rent (it being but a Chattel: which is granted in reverſion) without attornment. Dier 26. 167. 28 H. 8.

Marres

95 Matter of Record more then other transactions.

Co. Inſt. p. 1. 161. a. 3.

1 There is a diverſity between a warrant of Record, and a warrant, or an authority in Law; for if a capias be awarded to the Sheriffe to arreſt a man for felony, albeit the partie be innocent yet cannot he make reſcous; but if the Sheriffe will by the authority, which the Law giveth him arreſt a man for felony, which is not guilty, he may reſcue himſelfe.

A warr bare au

Littl. §. 406. Co. ibid. 247. b. 4. Dier 232. 9.

2 If a man de non ſane memoriæ or an Infant make a feoffment or other conveyance of his land in pais, the heire of the non ſane memoriæ, and the Infant himſelfe or his heire may enter and oust the feoffee, &c. Otherwiſe it is, if the conveyance be by fine, or by other aſſurance of record, &c. unleſs the Infant reverſe it before full age because of inſpection.

Convey by fine,

Co. ibid. 251. b. 2. & 4.

3 A particular Eſtate of any thing, that is in grant, cannot be forfeited by any grant in fee by deed, as if Tenant for life or yeares of an Advowſon: Rent, Common, or of a Reverſion or remainder of Land, by deed grant the ſame in fee, this is no forfeiture of his Eſtate; becauſe it paſſeth by deed, and nothing is diveſted, neither yet doth any thing thereby paſſe, albeit the deed of ſuch things be enrolled, and ſo made a matter of record; yet neither then worketh it any forfeiture, becauſe the deed is the originall, &c. But a grant of ſuch things by fine, (albeit no reverſion or remainder is thereby diveſted) worketh a forfeiture, becauſe that is matter of Record, ab origine, &c.

Convey by fine, then that grant.

Co. ibid. 252. a. 1.

4 An attornment of Record to a ſtranger by Tenant for life or yeares worketh a forfeiture: So doth not an attornment in pais.

Attornment forfeiture,

Co. ibid. 258. a. 2. & lib. 9. fol. 2. in the Lord *Anderſ* Caſe.

5 If an Infant or any man of full age have any right of entry into any lands, any ſtranger in the name and to the uſe of the Infant or man of full age may enter into the Lands, and this (regularly) ſhall veſt the Lands in them without any commandement precedent or agreement ſubſequent: But if a diſſeiſor levie a fine with proclamation according to the Statute of 4 H. 7. cap. 24. a ſtranger without a commandment precedent, or an agreement ſubſequent within the five yeares cannot enter in the name of the Diſſeiſee to avoid the fine: Howbeit an Aſſent ſubſequent within the five yeares is ſufficient; Omnis enim ratio habitio retrotrahitur & mandato æquiparatur: And this reſolution is grounded upon the conſtruction of the ſaid Statute, and the force of a fine, being a matter of Record, &c.

Entry by ſtranger ſi cient for t diſſeiſee, &c.

Co. ibid. 309. a. 4. & 314. a. 3. & Litt. §. 579. & Co. l. 2. 67. b. 4. in *Tooker's* Caſe.

6 Before the Statute of uſes (27 H. 8. cap. 10.) upon a grant in pais of a Seigniory, Rent, reverſion, or remainder, if either the grantor or the grantee had died before attornment, ſuch grant had been remedileſſe and void, &c. but if the grant had been by fine, then albeit the Conuſor or Conuſee had died, yet the grant had been good; for, by fine levied the Eſtate did paſſe to the Conuſee and his heires, and the attornment to the Conuſee or his heires at any time, to make privity to diſtraine, had been ſufficient: But now by force of that Statute the grant of ſuch things (by fine, or bargaine and ſale by deed indented and enrolled) is good (yea even to diſtraine alſo) without attornment, Vide R. 55. c. 69.

Grant in not good w out attorn- ment, wiſe of a f

Co. Inſt. p. 3. 320. a. 3.

7 If Tenant for life hath a privilege, not to be impeachable of waſt, or any other priviledge, and upon grant of the reverſion by deed he attornes without ſaving his privileges, yet loſeth he thereby no privilege, for there can be no concluſion or barre by ſuch attornment in pais; And ſo it is alſo of an attornment in Law; as if the Leſſor diſſeiſe the Leſſee

Claime of vilege by nant for &c.

Leſſée for life and make a feoffment in fée, and the Leſſée re-enter, this is an attornment in Law which ſhall not prejudice him of any privilege; Likewiſe if the Lord levie a fine of the reverſion, and the Conuſée die without heire, whereby the reverſion eſcheateth to the Lord: In this Caſe the Law doth ſupply an attornment, and therefore the Leſſée ſhall loſe no privilege, &c. But in a Quid Juris clamat brought by the Conuſée of a fine, if the Tenant for life claimeth not his privilege, but attornes generally, his privilege is loſt; becauſe that is upon record, and the writ ſuppoſeth him to be but a bare tenant for life; and therefore by his general attornment according to the writ he is barred for ever to claime any privilege, but a bare Eſtate for life, &c.

ornment. 8 If a reverſion be granted for life, the remainder in fée, by déed, and the grantée for life dies, attornment to him in remainder is void, for it is not according to the grant; otherwiſe it is, if the grant were by fine, &c. Vide ſupra 6. & R. 55. c. 69. Co. l. 2. 67. b. a. in *Tookers* Ca.

iver in urt of Re-d. 9 At the Common Law, if lands be given to Baron and Feme in taile, or in fée, and the Baron die; in this Caſe, albeit the Feme before her entry, reciting her Eſtate, ſaith by parol in pais, that ſhe aſſents and agrées to the ſaid Eſtate, or words to that effect, yet afterwards ſhe may waive that Eſtate in a Court of Record: So in M. 34 E. 1. Tittle Advowry 232. it was adjudged, that if a man take a diſtreſſe for one thing, yet when he comes into a Court of Record, he may make Avowry for what thing he pleaſeth: Alſo in 13 R. 2. Joint-tenancy, A Charter of feoffment was made to four, and ſeiſin was delivered to three in name of all, and the fourth comming and viewing the déed, diſagrées, and ſaith by parol, he will have nothing to do with the Land; and it was adjudged, that this diſagreément by parol in pais ſhall not deveſt the frank-tenement out of him: And Thorpe in 35 E. 3. Tittle Diſclaimer, ſaith, that in ſuch Caſe the tenancy remaines ſtill, until his diſagreément thereunto in a Court of Record, and therefore in ſuch a Court he may diſagrée and not otherwiſe, &c. Co. l. 3. 26. a. 3. in *Butler* and *Bakers* Caſe.

s compos tis. 10 The Law ſo much tenders the debility and weakneſſe of a non compos mentis, that in many Caſes the Acts, which he doth in pais, ſhall be avoided, &c. but matters of Record done by him ſhall not be avoided: as if he levie a fine, ſuffer a recovery, acknowledge a Statute or recognizance, &c. ſuch things as theſe ſhall not be avoided by any averment of non ſanæ memoriæ, either by his heires or executors, &c. Co. l. 4. 124. a. 2. in *Beverleys* Caſe.

ds of one lawed fa- by a par- upon Re-d. 11 If a man be out-lawed for felony, albeit he was in priſon or beyond Sea, &c. renders himſelfe upon the exigent, and upon his triall is found not guilty: yet he ſhall forfeit all his goods and chattels, and ſhall not have reſtitution, &c. for Kniver in 43 E. 3. 17. ſaith, that the party ſhall not have reſtitution of his goods, although the writ of exigent erronice emanavit, ſo long as the award of exigent (which is there called a judgement) ſtands in force: becauſe the fore-ſaid averments of impriſonment, or being beyond Sea, &c. are but matters in fuit. But (as it is ſaid in the ſame Booke) if ſuch an out-lawed perſon have a charter of pardon of an elder date then that of the Exigent, the goods are ſaved, for that the cauſe of ſaving them appeares upon Record, &c. Co. l. 5. 111. a. 2. *Foxleyes* Caſe.

Court of ord onely er to im-on. 12 In ſome Action the Defendant ſhall be fined in one Court, and onely amerced in another Court, and yet the offence ſhall be one and the ſame: As in a writ of Reception, if it be brought in the Common Pleas, and judgement there given, the Defendant ſhall be fined and impriſoned; but if the writ be Vicontiel, and before the Sheriffe in the County the Defendant is convict, the judgement ſhall not be, quòd capiatur, &c. but in ſuch Caſe he ſhall be onely amerced: And albeit the writ, viz. the Reception is of Record, yet in as much as the Judges Co. l. 8 60. b. 2. in *Beechers* Caſe. & Co. lib. 8. 41. a. 3. in *Grieſleys* Caſe. & lib. 8. 120. a. 1. in Doctor *Bonhams* Caſe.

in the Court, viz. the Iuſtors, are not Iudges of Record, nor the Court a Court of Record, they cannot impoſe a fine or commit any to priſon, Quia nulla Curia, qui Recordum non habet, poteſt imponere finem, neque aliquem mandare carceri, quia iſta ſpectant tantummodo ad Curias de Recordo, &c.

Co. Inſt. p. 1. 233. b. 4.

13 If a Leaſe for life be made to a Feme covert or an Infant, and they by Charter of Feoffment Alien in Fée, the breach of this Condition in Law is no abſolute forfeiture of her Eſtate: So it is alſo of a Condition in Law given by Statute, which giveth an entry onely, As if an Infant, or Feme covert with their husband, Alien by Charter of feofment in Mortmaine, this is no barre to the Infant or Feme covert: But if a recovery be had againſt an Infant or Feme covert in an Action of waſt, there they are bound and barred for ever: becauſe that is matter of record unto which the Law gives high reſpect: and therefore it is to be obſerved, that a condition in law by force of a Statute, which giveth a recovery, is in ſome Caſe more ſtrong, then a Condition in Law without a recovery: For if Leſſée for life make a leaſe for yeares, and after enter into the land, and make waſt, and the Leſſor recover in an Action of waſt, he ſhall avoid the leaſe made before the waſt done: But if the Leſſée for life make a leaſe for yeares, and after enter upon him, and make a feofment in fée, this forfeiture ſhall not avoid the leaſe for yeares, &c. Infanc. Feme covert. Forfeiture. Mortmain. Recovery. Waſt.

Co. ib. 356. a 4

14 If a man ſue a falſe and feigned Action againſt Tenant for life, and recover the land againſt him by default, ſo that he may have againſt the recoveror a Quod ei deforceat, according to the Statute of Weſt. 2. cap. 4. In this caſe, albeit the Action be falſe and feigned, yet is a Recovery (being a matter of Record) ſo much reſpected in Law, that it worketh a diſcontinuance: ſo that the Leſſor cannot have an Action of waſt neither againſt the one nor the other: for by the recovery the privity between the Leſſor and Leſſée is deſtroyed, and between the Leſſor and the recoverer there never was, nor can be any privity: and by the recovery all the reverſion is diſpeſſed out of the Leſſor and veſted in the recoveror: But if Tenant for life make a feofment in fée upon Condition, and waſt is done, and after the Leſſée re-enters for the Condition broken: in this Caſe the Leſſor ſhall have an Action of waſt. And ſo if a Biſhop make a leaſe for life or yeares, and the Biſhop die, and the Leſſée, the ſee being void, doth waſt, the Succeſſor ſhall have an Action of waſt: So if the Leſſée be diſſeiſed, and waſt is done, and the Leſſée re-enters, an Action of waſt ſhall be maintained againſt the Leſſée, and ſo in like Caſes: And yet in none of theſe Caſes, the Plaintiffe in the Action of waſt had any thing in the reverſion at the time of the waſt made: Howbeit in theſe Caſes the privity utterly ſtill remaines: but in the other by force of the recovery it is for the preſent utterly deſtroyed, &c. Vide Statute 14 Eliz. cap. 8. concerning this matter. Recovery. Diſcontinuance.

Litt. §. 695. Co. ib. 364. a. 4.

15 The Diſſeiſor lets the Land to the Diſſeiſée for yeares, who enters and diſclaimes (by parol in pais) to have any thing, but the leaſe for yeares in the Land; yet is the Diſſeiſée in his Remitter notwithſtanding ſuch diſclaimer in pais: But if he diſclaim in Court of Record, that he hath not any Eſtate, ſave onely ſuch Eſtate for yeares, ſuch diſclaimer in Court of Record ſhall conclude him: And ſo obſerve a diverſity between a claime or diſclaime in pais of an Eſtate, and a claim or diſclaime of Record: for a claime or diſclaime in pais ſhall not hinder a remitter: But a claim or diſclaim of Record ſhall; becauſe this worketh a Concluſion, ſo doth not that, &c. Diſclaime. Remitter.

Infants.

16 There is a diverſity to be obſerved between matters of Record done or ſuffered by an Infant, and matters in fait; for matters in fait he ſhall avoid either within age, or at full age; but matters of Record, as Statutes Merchant and of the Staple, Recogniſaances acknowledged by him, and a Fine levied by him, or a Recovery againſt him by default in a real action, (ſaving in Dower) muſt be avoided by him, viz. Statutes, &c. by Audita querela, and the Fine and Recovery by writ of Error, during his minority, and the like: And the reaſon thereof is, becauſe they are judicial acts, and taken by a Court or a Judge, &c. Co.lib.380.b.1

Partition upon reſerved not avoidable.

Partition in Chancery of an Advowſon.

17 If Coparceners make partition in Chancery, or in the Common Pleas to preſent by turn, and after a ſtranger uſurpes in their ſeveral turnes; yet after, when their turnes happen, each of them may have a Scire facias upon that partition againſt the ſtranger, when her turn falls, to ſhew wherefore he preſents, notwithſtanding ſuch uſurpation made; but it is otherwiſe (as it ſeems) where the partition is not of Record; for then they are put to their writ of right, by reaſon of ſuch uſurpation. FNB 36 c.

Plea to a writ of Eſcheat.

18 Some do hold, that if there be Lord and Tenant, and the Tenant be diſſeiſed, and the Diſſeiſee die without heir, the Lord accepts rent by the hands of the Diſſeiſor, this is no bar to him; but if he avow for the rent in a Court of Record, this ſhall bar the Lord of his writ of Eſcheat. Co. Inſt. p.1. 168.a.4.

Not named, yet good.

19 If a Grant be made to, or a Leaſe be made by a Dean and Chapter, Mayor and Communalty, or the like; it is good without naming the Dean or Mayor, &c. by their names; but in pleading the proper name of the Dean, Mayor, or, &c. muſt be ſhewed, becauſe it is matter of Record, and ought to be certain. Co.lib. 3. a.3.

Partition.

20 If there be two Coparceners, and one of them make a Leaſe for years of her part; and afterwards the other brings a writ de partitione facienda againſt the Leſſor, and partition is thereupon made: In this Caſe, albeit the part allotted to the Leſſor be leſſe then the part of the other, yet the Termor is without remedie: But if the partition were without writ, it ſeemes to be otherwiſe. Dier.52.20. 33 H.8

Ancient Demeſne.

21 Ancient Demeſne ſhall be extended by Elegit, becauſe in ſuch Caſe no Judgement is given to recover the poſſeſſion of the land in a Court of Record, but onely execution made by the Sheriff in pais; Howbeit in an Aſſiſe brought by tenant by Elegit, ancient Demeſne is a good Plea, (as it is held, in 22 Aſſ. Pl. 45.) becauſe there the Plaintiffe ſhall recover the poſſeſſion of the land by Judgement upon Record. Co.l.5. 105.a. 4. in *Aldens ca.*

Certificate revoked.

22 The Certificate of the Meſſenger (ſent by Queen Mary to the Palatinate in Germany to call for Barne and his wife, the Dutcheſſe of Suffolk home) and the abuſes there offered him by their ſervants being recorded in Chancery, and afterwards ſent by Mittimus into the Exchequer, could not be traverſed, for that it was a Record, and could not be tried by any Viſne of the Realm, it is otherwiſe of matter of fact done in the Countrey, &c. Dier. 177. 31. 2 *El.*

96 Conveyances by Livery, or which paſſe Eſtates of the Land, more then thoſe that paſſe by Grant, or onely paſſe things belonging to, or iſſuing out of the Land.

Livery in Deed.

1 Livery of ſeiſin is of greater conſideration in Law, then a bare Conveyance by Grant; For, a particular Eſtate of any thing that lies Co. Inſt. p.1. 251. b. 2.

Life. No forfeiture.

Lit. §. 609, 610 611. Co. ib. 330. b. 2.

lies in Grant cannot be forfeited by any Grant thereof made in Fee; As if tenant for life or years of an Advowſon, Rent, Common, or of a Reverſion or Remainder of land, by Deed grant the ſame in Fee, this is no forfeiture of their Eſtates, becauſe it paſſeth onely by Deed, and nothing is diveſted, neither yet doth any thing thereby paſſe, but what may lawfully paſſe: But if tenant for life of land enfeoffe another of the land in Fee by livery without Deed, that is a forfeiture of his Eſtate, in regard of the ſolemnity of the livery, whereby the Reverſion or Remainder is diveſted: So likewiſe if the Tenant for life or years of land, the Reverſion or Remainder being in the King, make a Feoffment in Fee by livery, &c. Albeit (in that Caſe) no Reverſion or Remainder is diveſted out of the King, nevertheleſſe that alſo is a forfeiture of his Eſtate, in reſpect of the ſolemnity by livery tending to the Kings diſheriſon, &c.

Conveyance by livery a forfeiture.

A Releaſe no Diſcontinuance.

Litt. §. 598, 599 600. and Co. ibid. 328. a. 3. Co. l. 3. 84. a. &c. in the caſe of Fines, and 85. b. 4. &c.

2 If tenant in tail be diſſeiſed, and he then releaſeth by his Deed to the Diſſeiſor and his heirs all his right that makes no diſcontinuance: becauſe nothing can paſſe by ſuch a releaſe, but that which may lawfully paſſe without prejudice to any other: But otherwiſe it is, if he make a Feoffment in Fee of the land, in reſpect of the livery of Seiſin; becauſe it is the moſt ſolemn and common Aſſurance in the Countrey, and to be maintained for the common good and quiet of the Realm: And upon the Feoffment the Freehold, (which is ſo much eſteemed in Law) doth paſſe by open livery to the Feoffee; but by the releaſe a bare right onely.

3 Vide ſupra M. 94. Pl. 25. M. 30. Pl. 8.

Leaſe good againſt iſſue in tail.

Dier. 51. b. 17] 33 H. 8.

4 Tenant in tail before the Statute of 27 H. 8. of Uſes makes a Feoffment in Fee to the uſe of himſelf and his heirs, and after he and his Feoffees make a leaſe for years reſerving rent, and after the Statute is made, the tenant in tail dies ſeiſed, and his iſſue aliens the land by fine before any entry made upon the Termor, or any receit of the rent, and the alienee accepts the rent: In this Caſe, the Alienee ſhall never avoid the leaſe, whether he accepted the rent or no; for the leaſe was not merely voided by the death of the tenant in tail, without actual entry made by the iſſue; but it hath been otherwiſe of a rent granted out of the land by the Tenant in tail and his Feoffees: So likewiſe in Littletons Caſe of a Feoffment by tenant in tail to his eldeſt ſon within age, and when he comes to full age, he make a Leaſe for years, and after the father dies, ſo as the ſon is remitted, yet he ſhall not avoid his leaſe, as he might have done a rent iſſuing out of the land.

Diſcontinuance.

Co. Inſt. p. 1. 332. a. 4.

5 If there be tenant for life, the remainder in tail, and he in the remainder grants it to another in fee by Deed, and the tenant for life attorns, this is no diſcontinuance of the remainder in tail; ſo it is likewiſe of a Rent-charge, Advowſon in groſſe, Common in groſſe, or the like; for the Rule is, that a Grant by Deed of ſuch things as do lie in Grant, and not in livery of Seiſin, do work no diſcontinuance.

Diſcontinuance.

Co. ib. 332. b. 1

6 If tenant in tail of a rent, ſervice, &c. or of a Reverſion or Remainder in tail, &c. grant the ſame in Fee with warranty, and he aweth Aſſets in Fee-ſimple, and dieth: This is neither bar nor diſcontinuance to the iſſue intail, but he may diſtrain for the rent, or ſervice, or enter into the land after the deceaſe of the tenant for life: But if the iſſue bringeth a Formedon in deſcender, and admit himſelf out of poſſeſſion, then he ſhall be barred by the warranty and Aſſets: It is otherwiſe, if tenant in tail in poſſeſſion maketh a Feoffment with livery of Seiſin, for that worketh a diſcontinuance: And yet if tenant in

tail

tail of a rent diſſeiſe the tenant of the land, and make a Feoffment in Fee with warranty, and dieth, This is no diſcontinuance of the rent, but the Iſſue may diſtrain for the ſame: And albeit the warranty extend to the rent, yet (by the Rule of Littleton §. 618.) it lieth not in diſcontinuance: And where the thing doth lie in livery, as lands and tenements, yet if to the Conveyance of the Freehold and Inheritance no livery of ſeiſin is requiſite, it worketh no diſcontinuance; as if tenant in tail exchange lands, &c. or if the King being tenant in tail grant by his Letters Patents the lands in Fee, there is no diſcontinuance wrought: Alſo it is regularly true of a thing that lieth in grant, that although it be granted by fine, yet it worketh no diſcontinuance: Howbeit if tenant in tail make a leaſe for years of lands, and after levy a Fine, this is a diſcontinuance: for a Fine is a Feoffment of Record, and in ſuch Caſe the Freehold paſſeth: But if tenant in tail maketh a leaſe for his own life, and after levy a Fine, this is no diſcontinuance, becauſe the Reverſion expectant upon a Eſtate of Freehold, which lieth only in grant, paſſeth thereby.

97 A matter in the right, more then a matter in poſſeſſion.

1 If the tenant be diſſeiſee, and the Diſſeiſor in a writ of Meſne, for to judge the Meſne, this ſhall not binde the Diſſeiſee: And ſo if the Meſne be diſſeiſed, and a falſe judgment is had againſt the Diſſeiſor, this doth not binde the Diſſeiſee, for the words of the Statute of Weſt. 2. cap. 9. are, *Quando tenens ſine præjudicio alterius quam medii attornare ſe poteſt capitali Domino, &c.* Co. Inſt. p. 1. 100. b. 1.

2 A title once gained by preſcription or cuſtome, cannot be loſt by interruption of the poſſeſſion for ten or twenty years; but by interruption in the right it may be loſt, as if a man have had a rent or Common by preſcription, unity of poſſeſſion of as high and permanable eſtate is an interruption in the right. Co. ib. 114. b. 2. Interruption. Claime.

3 In a writ of Meſne the Plaintiffe made his title by preſcription, that the Defendant and his Anceſtors had acquitted the Plaintiff and his Anceſtors, and the Tenant time out of minde, &c. the Defendant took Iſſue that the Defendant and his Anceſtors had not acquitted the Plaintiff and his Anceſtors, and the Tenant; and the Jury gave a ſpecial Verdict, that the Grandfather of the Plaintiff was enfeoffed by one Agnes, and that Agnes and her Anceſtors was acquitted by the Anceſtors of the Defendant time out of minde before that time, ſince which time no acquittal had been; and it was adjudged and afterwards affirmed in a writ of Error, that the Plaintiff ſhould recover his acquittal: for that there was once a title by preſcription veſted, which cannot be taken away by a wrongful ceaſer to acquite of late time: And albeit the Verdict had found againſt the letter of the Iſſue, yet for that the ſubſtance of the Iſſue was found, viz. a ſufficient title by preſcription, it was adjudged both in Banco, and afterwards in a writ of Error in B. R. for the Plaintiff. So a modus decimandi was alledged by preſcription time out of minde for tithes of lands, and thereupon Iſſue joyned, and the Jury found, that before 20 years then laſt paſt, there was ſuch a preſcription, and that for theſe 20 years he had paid tithe-lamb in ſpecie, and it was objected that the Iſſue was found againſt the Plaintiff, for that the preſcription was general for all the time of preſcription, and 20 years did fall thereof. Secondly, that the party by payment of tithes in ſpecie had loſt the preſcription or cuſtome: But it was adjudged for the Plaintiffe in the prohibition: for albeit the modus decimandi had not been paid by the ſpace. Co. ibid. Title of Iſſue. Modus decimandi. M. 43. & 44. El. in a Prohibition betwixt *Nowel* and *Hicks* in B. R.

ſpace of 20 yeares, yet the preſcription being found, the ſubſtance of the Iſſue is found for the Plaintiff: And if a man hath a Common by preſcription, and taketh a Leaſe of the land for 20 yeares, whereby the Common is ſuſpended, after the yeares ended he may claim the Common generally by preſcription; for that the ſuſpenſion was but to the poſſeſſion, and not to the right, and the Inheritance of the Common did alwayes remain: And when a Preſcription or Cuſtome doth make a title of Inheritance, the party cannot alter or wave the ſame in pais. Common.

Litt. §. 430. Co.ib.257.a.2

4 The Diſſeiſée after claim (lawfully made) ſhall have an Action of Treſpaſſe againſt the Diſſeiſor, notwithſtanding his continuance of poſſeſſion and occupation, and ſhall recover damages and coſts for the firſt entry before any regreſſe, and after regreſſe of the Diſſeiſor he ſhall have an Action of Treſpaſſe with a Continuando, and recover as well for all the mean occupation, as for the firſt entry. Claim Treſpaſs Diſſeiſee Diſſeiſor.

Litt. §.486, 487. Co.ib.283.b.2.

5 If the Diſſeiſée enter upon the heir of the Diſſeiſor (which entry is a diſſeiſin, &c.) and the heir bring an Aſſiſe or writ of Entry in the nature of an Aſſiſe, he ſhall recover; but if the heir bring a writ of right againſt the Diſſeiſée, he ſhall be barred, becauſe in the writ of right the charge of the grand Aſſiſe upon their oath is upon the meer right, and not upon the poſſeſſion, &c. And albeit (in that Caſe) the heir in an Aſſiſe or writ of Entry, &c. may regain the poſſeſſion from the Diſſeiſée, yet ſhall the Diſſeiſée ſtill retain his ancient right, and thereupon may again recover the poſſeſſion of the land from the heir in a writ of Entry in the per. for the diſſeiſin made unto him by the anceſtor of the heir, or otherwiſe may recover it in a writ of right, &c. And therefore there is a diverſity worthy obſervation, when the poſſeſſion ſhall draw the right of the land to it, and when not: for, when the poſſeſſion is firſt, and then a right cometh thereunto, the entry of him that hath right to the poſſeſſion, ſhall gain alſo the right, which followeth the poſſeſſion, and the right of poſſeſſion (in that Caſe) drawes the right unto it; but when the right is firſt, and then the poſſeſſion cometh to the right, albeit the poſſeſſion be defeated (as in the Caſe aforeſaid it is by the heir of the Diſſeiſor) yet the right ſtill remaineth: So if a woman that hath right of Dower diſſeiſe the heir, and he recover the land againſt her, yet ſhall he leave the right of Dower in her: Likewiſe if the heir of the Diſſeiſor be diſſeiſed, and the Diſſeiſor enfeoffe the heir apparent of the Diſſeiſée being of full age, and then the Diſſeiſée dieth, and the naked right deſcends to him, and the heir of the Diſſeiſee recovers the land againſt him, yet doth he leave the naked right in the heir of the Diſſeiſée, that being originally in him, in reſpect of the gravity of Deſcent: Alſo if the heir of the Diſſeiſor be diſſeiſed, and the Diſſeiſée releaſe to the Diſſeiſor upon condition, if the condition be broken, it ſhall reveſt the naked right, &c. And ſo the Diſſeiſée hath entred upon the heir of the Diſſeiſor, and made a Feoffment in Fee upon condition, if he entred for the condition broken, and the heir of the Diſſeiſor entred upon him, the naked right ſhould be left in the Diſſeiſée: But (in theſe two laſt Caſes) if the heir of the Diſſeiſor had entred before the Condition broken, then the right of the Diſſeiſée had been gone for ever; becauſe in the firſt Caſe the poſſeſſion of the diſſeiſor was firſt, and then came the right unto it by the releaſe of the diſſeiſée, and in the other Caſe, the poſſeſſion and right happened both in one and the ſame inſtant; and (in that Caſe) the poſſeſſion ſhall relate firſt. And in both Caſes untill the breach of the Condition, the diſſeiſée has quitted himſelf of his whole Eſtate. In like manner, A. diſſeiſeth the heir of the diſſeiſor, and the diſſeiſée releaſeth to A. Now The mean preferred fore the poſſeſſion.

Co.ib.166.a. 2, &c.

hath A. the méere right to the land; and therefore if the heire of the diſſeiſor enter into the land, and re-gaine the poſſeſſion, that ſhall draw with it the méere right to the land, and ſhall not re-gaine the poſſeſſion onely, and leave the méere right in A. but by the recontinuance of the poſſeſſion, the méere right is therewith veſted in the heire of the diſſeiſor; becauſe the poſſeſſion was in A: before the acquiſition of the méere right, &c.

ſpaſs. lein. 6 In an Action of Treſpaſs againſt Tenant for life, who pleads villeinage in the Plaintiff and the Plaintiff is found frank & no villein; yet he in the reverſion is not eſtopped by this verdict: for ỹ thing it ſelfe whereupon the reverſion dependeth, is not in demand, and the Plaintiffe ſhall recover onely dammages: Neither can he in the Reverſion have a writ of Error or attaint upon it: Otherwiſe it is in à nativo habendo, for there the right of Villeinage commeth in queſtion, and he in the Reverſion may have an error or attaint. 14 H. 7. 5. Keble. Finch 30.

98 Yet it favoureth Poſſeſſion, where the right is equal.

ppe the rdſhip. 1 If a man purchaſeth at one time ſeveral lands, holden of ſeveral Lords by Knight-ſervice, and dieth; the Lord that firſt can happe the wardſhip of his heire, ſhall have it. Finch 30.

rdian in ocage. 2 Husband and Wife purchaſe ſoccage land to them and the heires of their body, and have iſſue within fourtéen yeares of age die: In this Caſe, if the Grand-mother of the part of the Mother of the Iſſue doe firſt ſeiſe the body, ſhe ſhall have the wardſhip, and not the Grand-father of the part of the Father of the Iſſue. 8 El. 296. Finch 30.

rdian in ocage. 3 If lands holden in ſoccage be given to a man and the heires of his body, and he dieth his heire within the age of 14 yeares, the next Coſen of the part of the Father (albeit he be the worthyer) ſhall not be preferred before the next Coſen of the part of the Mother, but ſuch of them as firſt ſeiſeth the heire ſhall have his cuſtody. Co. Inſt. p. 1. 88. a. 4. Pl. Co. *Carels* Caſe.

rdian in ocage. 4 If a man be ſeiſed of lands holden in ſoccage of the part of his Father, and of other lands holden in ſoccage of the part of his mother, and dieth, his Iſſue being within the age of 14 yeares: In this Caſe, ſuch of the next of kin of either ſide, as firſt happeth the body of the heire, ſhall have him; Howbeit the next of the bloud of the part of the Father ſhall enter into the lands of the part of the mother, and the next of kinne of the part of the Mother, ſhall enter into the lands of the part of the Father, &c. Co. ibidem.

nants in mmon. nels rſonal. 5 Tenants in Common of Perſonal goods have an equal right in them; Howbeit the one may take them all from the other, and ſhall have them to his owne uſe, if he can hold them: but the other, if he can re-gaine them by Catch-pole Law, he ſhall have them: And ſo it is alſo of real Chattels, that are intire: but not of other Chattels real that are ſeverable, &c. Co. ibid. 200 a. 2.

e by in- chment. 6 If there be Lord and Tenant by fealty and 2 s. Rent, and the Lord by incroachment (viz. by the voluntary payment of the Tenant) happeneth ſeiſin of more Rent, then he ought to have; In this Caſe, the Law is ſo great a favourer of ſeiſins and poſſeſſions; that the Tenant ſhall not avoid this ſeiſin had by incroachment in avowry unleſſe it be in ſome ſpecial Caſes, which ſee ubi ſuprà. Co. l. 4. 11. b. 2 in *Bevils* Caſe

99 The

99 The Law reſpecteth matters of profit, and Intereſt, largely; Of pleaſure, skill, eaſe, truſt, authority, and limitation, ſtrictly.

Co. Inſt. p. 1. 46, b. 2.

1 Albeit to divers purpoſes a Leſſée for yeares is not Tenant before entry, as a releas made to him is not good to increaſe his Eſtate, before entry, neither yet can the Leſſor, before entry, grant away the reverſion by the name of the reverſion; nevertheleſſe, he before entry hath an Intereſt, inter eſſe termini,, grantable to another: So that although the Leſſor die before the Leſſée enters, yet the Leſſée may enter into the lands: So alſo if the Leſſée die before he entred, yet his Executors or Adminiſtrators may enter; becauſe he preſently by the leaſe hath an Intereſt in him; And therefore if the leaſe be made to two, and one die before entry, his Intereſt ſhall ſurvive, &c.

Intereſt terminare.

Co. ibid. 49. b. 2. 181. b. 2. & Co. l. 5. 94. b. 4. in *Barwiks* Caſe.

2 If there be two joynt attorneys to receive livery for another, and livery of ſeiſin is made to one of them, in the name of both this is clérly void: becauſe they had but a méere and bare authority, and they both doe in Law make but one attorney, unleſſe the warrant be joyntly and ſeverally: But if a leaſe for yeares without déed be made to A. and B. the remainder to C. in fée, and livery is made to A. in the abſence of B. in the name of both, it ſéemeth (in this Caſe) the livery is good to veſt the remainder; becauſe the Leſſée for yeares, that toke the livery hath an Intereſt, &c.

Two joynt Attorneys. Two joynt Leſſees.

Co. ibid. 52. a. 4. &c.

3 There is a diverſity betwéen an authority coupled with an Intereſt, and a bare authority: For example, There was a cuſtome in a Mannor for the Lord to grant copi-hold lands always in fée-ſimple, and never for any leſſer Eſtate, and the Lord did grant to one by copy for life, the remainder to another and the heires of his body: And it was adjudged (H. 36 Eliz. Rot. 492. inter Sharton & Barns in an ejectione firmæ in B. R.) that the grant and remainder ever was good; becauſe the Lord having authority by Cuſtome, and an Intereſt withall might grant any leſſer Eſtate: for in this Caſe, the Cuſtome that enableth him to the greater, enableth him to the leſſer, Omne majus continet in ſe minus, &c. So alſo if one as Procurator or attorney to another preſent to his own Benefice, he thereby puts himſelfe out of poſſeſſion; becauſe of his Intereſt coupled with his authority, and for that the préſentée commeth in by the Inſtitution and Induction of the Ordinary; If the Lord or a Grantée of a Rent-charge had béen alſo Ceſtuy que uſe of the land, and after the Stat. of R. 3. and before the Stat. of 27 H. 8. Ceſtuy que uſe had made a feoffment in fée of the land, albeit (in this Caſe) the land paſſeth from the feoffées, and his feoffment is warranted by the power given to him by the Statute, yet the Seignory or Rent-charge is extinct by his feoffment, for that he had not a bare authority as an Attorny hath, but alſo an intereſt coupled therewith: But he that hath but a bare authority to do a thing is ſo farre from doing more then which he is expreſſely authoriſed to do, that if he ſtrictly purſue not his authority, the Law adjudged that which he doth to be abſolutely void: As if a man be diſſeiſed of Black-acre and White-acre, and a warrant of attorney is made to enter into both, and to make livery; there, if the attorney enter into Black-acre onely and makes livery ſecundum formam cartæ, In this Caſe the livery of ſeiſin is void: becauſe he doth leſſe then his warrant; for, the Eſtate in White-acre cannot be diveſted without an entry: So likewiſe, albeit the warrant be general, viz. to deliver ſeiſin; yet the attorney cannot deliver ſeiſin within the view: for his warrant is intendable in Law of an Actual and expreſſe livery, and not

Difference betweene a bare authority, and an authority coupled with an intereſt.

not of a livery in Law; and so it was resolved in Yarhams Case, P. 3. El. in Co. Banco. In like manner, albeit the warrant of Attorney be indefinite, without limitation of any time, yet the Law prescribeth a time, which the attorney is bound to observe, viz. in the life time of the Feoffor and Feoffee; for, if either of them die before Livery made, that is a countermand of the Letter of attorney, and also the Deed it self is become of none effect, because in that case nothing doth passe before Livery of seisin; for, if the Feoffor dieth, the land descends to the heir, and if the Feoffee dieth Livery cannot be made to his heir, because then he should take by purchase, whereas heires were named by way of limitation: And herewith agreeth Bracton, Item, Oportet, quòd donationem sequatur rei traditio, etiam in vita donatoris & donatarii, &c.

Bailment of Cattel. 4 If I bail unto a man my sheep to compasse his land, or my oxen, to tile his land, and he kill any of them, I may have an action of trespasse, or an action of trespasse upon the case against him, notwithstanding such bailment; because when the Bailee having but a bare use of them, taketh upon him, as an owner, to kill them, he loseth the benefit of the use of them, which was limited with this caution, viz: that he should not misuse them, &c. Co. ib. 57. a. 4.

Gage of goods 5 If goods be delivered to one, as a gage or pledg, and they be stolen, he shall be discharged; because he hath a property in them, and therefore ought to keep them no otherwise than his own: but if he that gaged them, tendred the money before the stealing, and the other refused to deliver them, then for this default in him he shall be charged; for, after such tender he kept them upon trust as Bailee, and therefore was to look safely to them at his peril. Co. ib. 89. a. 4.

Land devised to be sold. 6 If a man seised of Lands deviseth, that his executors shall sell it, and he maketh two executors and dieth; In this case, if one of the executors before sale thereof die, or refuse, at the Common Law before the Statute of 21 H. 8. cap. 4. the land could not have been sold by the surviving executor; because the power given them by the will, being but a bare authority, it ought strictly to be observed, and they ought both to joyn in the sale: but if a man deviseth lands to his executors to be sold, and he maketh two executors, and the one dieth, yet the survivor may sell the land; because they had not a bare trust onely, but also a trust coupled with an interest, and therefore as the state, so also the trust shall survive, &c. Co. ib 112. b. 3. 113. a. 2. 181. b. a. Dier 177, 32. 2 El.

Tender upon Mortgage. 7 Upon a Mortgage, if a stranger, that hath no interest in the land, will of his own head take authority to tender the moneys, &c. the Feoffee is not bound to receive them: but if the Mortgager die, his heir within the age of 14 yeares, and the land being holden in soccage, the next of the kinne, to whom the Land cannot descend, being his Guardian in soccage, may tender in the name of the heir; because he hath an interest as Guardian in soccage: Also if the heir be within the age of 21 yeares, and the land is holden by Knight-service, the Lord, of whom the land is holden, may make the tender for his interest, which he shall have, when the Condition is performed; for these in respect of their interest, are not accounted strangers, &c. Co. ib. 206. b. 4. Litt. §. 334.

Conditions in Law upon trust, 8 If an Office of Parkership be granted or descend, to an infant or Feme covert, and the conditions in Law annexed to that Office (which require skill and confidence,) be not observed and fulfilled, the Office is lost for ever; because (as Littleton saith §. 379.) that implicite condition of skill, &c. is as strong as an expresse condition, but if it ceases for life be made to a feme covert, or an infant, and Co. ib. 233. b. 4.

by Charter, of Freehold alien in fee, the breach of this condition in law, that is without skill, &c. is no absolute forfeiture of that estate: So it is likewise of a condition in law given by Statute, which giveth an entry onely; As if an Infant, or feme covert with her husband aliens by Charter of freehold in Mormain, this is no bar to the Infant or feme covert; because these conditions attend over to defeat an Interest onely, but the other an Interest mixed with a trust and confidence.

Co. ib. 258. a. 4. 9 If a man makes a letter of attorney to deliver seisin to I. S. upon condition, and the Attorney delivereth it absolute, this is void; And so (some hold) if the warrant be absolute, and he delivereth seisin upon condition, the livery is void; because he ought to pursue his Warrant, &c. Livery of seisin.

Co. ib. 265. b. 1. 10 If a man by his last Will devise, that his executors shall sell his lands, and dieth; If the Executors release all their right and title in the land to the heir, this is void: for that they have neither right nor title to the land; but onely a bare authority, which is not within the case a release of a right; And so it is, if Cestuy que use has devised, that his feoffees should have sold his lands, Albeit they have made a feoffment over, yet might they sell the use: for their authority in that case is not given away by the livery, because in these cases the power or authority extendeth onely to the use of a stranger, and nothing for the benefit of him that makes such release or feoffment: It is otherwise where the power or authority doth also respect the benefit of the releasor, as in the case of the usual power of revocation; when the testator hath power to alter, change, determine, or revoke the uses, being intended for his benefit; for in that case he may release, and where the estates before were defeasible, he may by his release make them absolute, and so may himself frame any alteration or revocation, as it was resolved in Albanie's case in 1 Rep. 112, in 120. Power of Revocation.

Co. l. 1. 112, 113. in *Albanies* Case. Co. ib. 311. a. 3. Litt. §. 552. 11 Attornment is a kind of power, which the tenant, &c. hath to make perfect the grant of a reversion, remainder, rent, &c. And therefore it ought to be always strictly and exactly directed according to the grant: As if the Lord first grant his services in fee to one, and afterwards to another for life, and the tenant first attorns to the last grantee; In that case, he cannot after attorn to the first grantee to make the fee simple pass, for that would not be according to the grant; but in that case the Attornment to the first is countermanded: And so it is if a reversion expectant upon an estate for life be granted to another in fee, and before the Grantee before Attornment confirms the estate of the Lessee, in tail, the Attornment to the Grantee for the Fee simple is void after the same manner, if a Reversion upon an Estate for years be granted over for, and the Lessee confirm the estate of the Lessee, for life, he cannot afterwards attorn, &c. Attornment.

Co. ib. 365. b. 3. 12 Warranties are favoured in Law, because they are matter of interest, whereby a mans estate is the better assured: It is otherwise of Estoppels; because they are matter of limitation, whereby an Estate is barred. Warranty, Estoppels.

Co. l. 9. 75. b. 3. in *Combes* Case. 13 If man hath or takes authority coupled with a confidence, as Executors have to sell land, they cannot do it by Attorney; but if a man hath authority, as absolute Owner of the Land, there he may do it by Attorney, as Cestuy que use might after the Statutes of 1 R. 3. and before the Statutes of 27 H. 8. For Cestuy que use has absolute authority to dispose of the land, as his pleasure, without any confidence reposed in him, as appears in 21 Eliz. Dyer 283. and there also a Judgement in 25 H. 8. is cited, which agrees with it, against the opinion of some Justices in 9 H. 7. fol. 24. So like wise a Copyholder, who hath not a bare authority onely Executors, Cestuy que use. Copyholds. Power to make Leases.

onely to surrender, but likewise a customary estate of Inheritance coupled with such an authority, may surrender by Attorney. Also there is a diversity between a general absolute power and authority, as Owner of the Land, as aforesaid, and a particular power or authority (by him that hath but a particular interest) to make Leases for lives or years; And therefore if A be tenant for life, the remainder in tail, &c. And A. hath power to make Leases for 21 years, rendring the ancient rent, &c. he cannot make a lease by a letter of Attorney by force of his power; because he hath but a particular power, which is personal to himself alone, as it was resolved in the Lady Greshams Case, 24 Eliz. per Wray. and Anderson, then Justices of Assise in Suffolk.

wer to make ases not in ir own me.

14 When any hath authority as Attourney to do an Act, he ought to do it in the name of him, that gives him such authority; for he appoints the Attorney to be in his place, and to represent his person; and therefore the Attorney cannot do it in his own name, nor as his proper act, but in the name, and as the act of him, but gives him the Authority; And what he doth otherwise is void: So if Attorneys have power by writing to make leases by Indenture for years, &c. they cannot make the Indentures in their own name, but in the name of him, that gave them warrant, &c. Co. ib. 79. b 4.

he Office of harshalsie.

15 The office of Marshal of the Marshalsie cannot be granted for years; because it is an Office of great trust annexed to the person, and concerns the administration of Justice, and the life of the Law, which is to keep such as are in Execution in salva & arcta custodia, to the end they might the sooner pay their debts, &c. And this trust is individual and personal, so that it shall not be extended to Executors or Administrators; for the Law will not repose confidence in matters concerning the administration of Justice in persons unknown. Co. l. 9. 96. b. 4. in Sir George Reynels Case.

han Office o survivor.

16 If an Office of trust be granted to two pro termino vitæ suarum (without more) by the death of one of them the grant shall be void; for it being an Office of trust no survivour can be thereof: In like manner, there can be no survivor in the Office of the two Auditors of the Court of Wards; for the Statute of 32 H. which erects that Court, provides, that there shall be two persons, &c. who shall have a Judicial voice: and therefore (in that case) the King cannot appoint onely one; because it is a matter of trust committed to two, and the subject by that Act hath an Interest in it, & securius expediuntur negotia commissa pluribus: Howbeit the King may constitute one at one time & another at another time by several Patents; And albeit he may so do, yet he, that is first constituted, hath no judicial voice, before the other be also constituted; for it is provided by the Statute, that two persons, &c. shall be one Officer: And therefore (in the same case) although they be constituted by one and the same Patent with these words, conjunctim & divisim, & alterius eorum diutius viventis; yet that shall serve for no other purpose, then that the survivor shall be one of the persons, to whom another may be added to make up that one Office, &c. Co. l. 11. 3. b. 4. in Auditors Curles Case.

ence.

17 A licence to hunt in my Park or Walk in my Orchard extends but to himself, not to his servants, or other in his company; for, it is but a thing of pleasure; otherwise it is of a licence to hunt, kill, and carry away the Deer; for that is a matter of profit. 13 H. 7. 13. Finch 31.

y.

18 Way granted to Church over any land, extends not to any other but himself; for it is but an Easement. 12 H. 7. 25. b. Finch ibid.

rnment.

19 A Reversion granted to two Joynt-tenants, and the tenant attorns to one, it is a void Attornment. 11 H. 7. 12. b. Finch ibid.

20 If the Sheriff behead one, that should be hanged, it is felony. Finch ibid. 5 H. 6. 58. b. 4.

4 E. 6, 68. b. *Finch* ibid. 21 The King licenceth one to alien the third part of his Land, and he alieneth all, it is a void alienation for all. Licence.

Finch ibid. 22 A Leaſe is made to A. and B. for their lives, A. dyeth, B. ſhall have all during his life, for it is an Intereſt: But if a Leaſe be made to I.S. during the life of A. and B. there (if one of them die) the Eſtate is utterly determined; for that is a limitation. Joyntenans limitation.

Co. l. 1. 173. b. 4. *Digges* Caſe. 23 A. covenants to ſtand ſeiſed to the uſe of himſelf for life, the Remainder to B. in tail, &c. which power to revoke and limit new Uſes, by Deed indented to be inrolled in Chancery; A. afterwards revokes and limits by Deed indented, and then levies a Fine, and after that the Indenture of Revocation, &c. is inrolled in Chancery: Here, by levying the Fine before inrolment he hath extinguiſhed his power of Revocation, &c. So alſo it had been, if he had made Feoffment of the Land; for, power of Revocation, and limitation of Uſes are to be punctually obſerved, becauſe ſtrictly taken in Law; And therefore alſo (in the ſame caſe) theſe words, Indented to be inrolled, are to be underſtood, Indented and Inrolled. Revocations and Limitations ſtrictly taken.

Co. ib. 174. b. 2. 24 A. covenants with B. that in conſideration B. will marry his Daughter, he and his heirs will ſtand ſeiſed to the uſe of B. and his heirs, B. enters, and diſſeiſeth A, and makes Feoffment in Fee, A. re-enters, and after B. marries his Daughter; yet here, the Uſe doth not veſt in B, becauſe he hath extinguiſhed the limitation of the Uſe to him by his Feoffment. Limitations extinct.

Dier 56. 18. 35 H. 8. 25 If a man be bound in an Obligation with condition to pay 10 l. to the Obligor at a day to come, and the Obligee delivers him an Horſe, or any other thing in ſatisfaction of the 10 l. and the Obligee accepts it, the condition is performed, for the Obligee may diſpence with his own duty by that means, but if the condition be, that a ſtranger to the condition ſhall pay it, or that the Obligor ſhall pay it to a ſtranger to the Obligation, in ſuch caſes, the Conditions ought to be ſtrictly performed, according to their ſeveral limitations, otherwiſe the Obligations are forfeit, for in ſuch caſe, an horſe, or other thing in ſatisfaction of the ſumme will not ſuffice, becauſe ſuch limitations muſt be ſtrictly obſerved. Obligations. Limitation of payment.

Dier 56, 20, &c. 35 H. 8. 26 In Debt upon an Obligation to perform Covenants of an Indenture, &c. the Defendant pleads a Releaſe of all Covenants in the ſame Indenture, made five yeares after the date of the ſaid Indenture, and this was held no good plea in barre of the Obligation, becauſe the limitation of the condition being for the performance of Covenants, if any Covenant was broken before the ſealing and delivery of the Releaſe, the Obligation was thereby forfeit, and could not be avoided by the Releaſe. Obligation. Covenants.

Dier 210, 24. 4 Eliz. 27 A man deviſeth, that his Executors ſhall take the profits of his Land, until his heir ſhall be at full age to pay Debts, &c. the one dies, after the Survivor makes his Executors and dies alſo, the Executor of the Executor laſt dying, ſhall take the profits; becauſe it is an intereſt, that ſurvives; It is otherwiſe, if it had been but a bare authority. Deviſe.

Dier 219, 8. 5 Eliz. 28 A man deviſeth, that after the death of his wife, his lands ſhall be ſold by his Executors, una cum aſſenſu A. and makes his wife and a ſtranger his Executors, and dies, the feme dies, and A. alſo dies; In this caſe, the authority is determined. Deviſe.

Dier 242, 51. 8 Eliz. 29 Two ſubmitted themſelves to an Arbitrament by Recognizance concerning the right and intereſt of 200 acres of land, called Kelſtorling, and for all other actions and ſuits concerning the ſame, Ita quòd Arbitrium, &c. before a certain day; The Arbitrators award, that the Defendant ſhall have brakes during his life in the Waſte of the Town of Arbitrament.

of Kelſtorn, rendring to the other 2 s. per annum. And upon a Demurrer it was adjudged a void award for three cauſes. 1 Becauſe they made their award but of one thing, whereas the ſubmiſſion was of two; Howbeit, if the ſubmiſſion had been by Parol, it had been a good award of part. 2 They have not awarded the property of the land, whereof the ſubmiſſion was, but a profit onely out of the land. 3 They have not in their award named Kelſtorling, and although they might intend it, yet an averrement of the parties cannot reclaim the intent of the Arbitrators; And all this, becauſe their power being but a bare authority, muſt be ſtrictly obſerved.

100 And therefore theſe may be countermanded, ſo cannot thoſe.

Office with-profit diſ-ged, with other-

1 Where the Grantee of an Office hath no profits thereby, but onely a Collateral certaine Fee, there the Grantor may diſcharge him of his ſervice; as to be a Bailiff, Receiver, Surveyor, Auditor, or the like, the exerciſe whereof is onely Labour and Charge to him; Howbeit, though he no diſcharge, yet he muſt have his Fee, &c. But where the Grantee, beſides his certain Fee, hath alſo profits, and availes by reaſon of his Office, there the Grantor cannot diſcharge him of his ſervice, or attendance; for that would be to the prejudice of the Grantee: As if a man doth grant to another the Stewardſhip of his Courts of his Manors, with a certain Fee, the Grantor cannot diſcharge him of his Service, and attendance; becauſe he hath other profits, and fees belonging to his Office, which he ſhould loſe, if he were diſcharged of his Office: So it is alſo in the caſe, which Littleton putteth (§ 379.) of the Office of the Keeper of a Park; becauſe (in that caſe alſo) he hath not onely his Fee certain, but profits and availes alſo, in reſpect of his Office, as Deer-skins, Shoulders, &c. Co. Inſt. p. 1. 233. a. 4, &c.

ignment.

2 If a feme ſole maketh a Leaſe for life or years, reſerving a Rent, and granteth the Reverſion in Fee, and taketh husband, this is a Countermand of the Attornment. Co. lib. 3 10. b. 1.

er of Arbitration can-be made ocable.

3 If a man be bound by Obligation to ſtand to, abide, obſerve, &c. the Rule, Arbitrament, &c. of another; yet he may countermand the authority ſo given to the Arbitrator, for a man cannot by his act make ſuch an authority, power, or warrant to be uncountermandable, which by the Law, and of its own nature is countermandable: As if I make a Letter of attorney to make Livery, or to ſue an action in my name, or if I aſſign auditors to take an accompt, or I make one my Factor, or if I ſubmit my ſelfe to an arbitrament; albeit theſe are made by expreſſe words irrevocable, or although I grant or bind my ſelf, that all theſe ſhall ſtand irrevocably, nevertheleſſe, they may be revoked: So likewiſe, if I make my laſt Will and Teſtament irrevocable, yet I may afterwards at my pleaſure revoke it: for, my act and my words cannot alter the judgment of Law, and make that irrevokable, which of its own nature is revocable: And therefore, notwithſtanding it is ſaid in 5 E. 4. 3, 6. That if I be bound to ſtand to the award, that I S. ſhall make, I cannot diſcharge that Arbitrament, becauſe I have bound my ſelf to ſtand to his award, and that if it were without Obligation, it would be otherwiſe; Nevertheleſſe, in the one caſe and in the other, the authority of the arbitrator may be countermanded; but then in the one caſe, he ſhall forfeit his Obligation, and in the other caſe he ſhall loſe nothing; for, ex unda ſubmiſſione non oritur actio; And with this agrees Brooke, in abridging the ſaid Book of 5 E. 4. Vide 21 H. 6. 30. 28 H. 6. 6. 49 E. 3. 9. 18 E. 4. 9. 8 E. 4. 10. Co. l. 8. 81. a. 3. in *Vinyors* Caſe.

9 E. 4. 4. b. 1 a E. 5. 28 H. 8. Di 22. *Perkins.* 14 E. 4. 8. *Perkins* 19 6.

4 A licence to come to my houſe to ſpeake with me: Goods bailed over to be delivered to J. S. or to beſtow in Almes, a letter of Attorney to deliver ſeiſin; all theſe may be countermanded before they be done: But if I preſent J. S. to a Church, I cannot after varie and preſent a new; for a kind of Intereſt paſſeth out of me: So if I deliver an Obligation as a forowle into a ſtrangers hand, to be delivered to the Obligée upon a Condition to be performed, this cannot be countermanded: for upon the delivery there paſſeth an Intereſt to the Obligée, he being (as it were) party and privy to the delivery. Finch 32.

Licence. Authority Countermandable. Preſentm Obligem

Dier 49. 7. &c. 33 H. 8.

5 A man delivers a ſumme of money to another to the uſe and behoſe of a Woman, and to deliver it unto her upon the day of her marriage; In this Caſe, when a man makes ſuch a conditional gift of his free will and pleaſure, and delivers the thing in Ovell hand to keep to the uſe of a ſtranger, before that condition be performed, the bailment (which is but a meere authority) is revocable; So if a man deliver to his ſervant at Chriſtmas a gold ring to give it for a new years gift to a ſtranger, he may countermand it notwithſtanding the gift: But if I ſay that J. S. hath enfeoffed me of certaine land, and in recompence thereof I give him this money, and withall delivet it to a ſtranger to be delivered over: In that Caſe I cannot countermand it, becauſe this gift doth not take effect as a free gift, but as a ſatisfaction and intereſt, &c.

Bailment

Dier 177. 31. a El.

6 The licence granted to Maſter Bartue (to go beyond Sea to recover the debts of Charles Brandon Duke of Suffolke deceaſed, provided, if he ſhould entertain any fugitives of England, that then it ſhould ceaſe) was not countermandable until he did entertaine fugitives, becauſe till then he had the licence in nature of an Intereſt, being (indeed) granted unto him for a certaine time, viz. until the proviſo were broken.

Licence no revocable.

7 Hob. 117. Sir Dan. Norton againſt Simmes, the under-ſhrivewick revocable.

101 Matter of ſubſtance more then matter of circumſtance.

Co. Inſt. p. 1. 114. b. 2.

1 In a writ of Meſne the Plaintiffe ſaith, that the Defendant and his Anceſtors had acquitted him and his Anceſtors, &c. and upon a ſpecial Verdict the Jury found, that the Plaintiffs Grand-father bought the land of one Agnes, and that before that purchaſe acquital was uſed but not ſince: And (in this Caſe) it was adjudged both in Banco, and afterwards by writ of Error in B. R. that albeit the Verdict was found againſt the letter of the Iſſue, yet for that the ſubſtance of the Iſſue was found, viz. a ſufficient title by preſcription, the Plaintiffe ſhould recover his acquital: So if a modus decimandi be alleadged by preſcription, and the Jury finds a continuance of the preſcription till 20 years and after 20 years a paiment in ſpecie: In this Caſe, albeit the Jury finds not the preſcription, as it is alleadged, viz. for the whole time; yet for as much as the ſubſtance of the Iſſue is found, viz. the preſcription, that ſhall not be prejudiced by ſuch ceſſer for 20 years, which is but a circumſtance, &c. For if the matter and ſubſtance of the Iſſue be found, it is ſufficient.

Writ of Meſne Preſcription *Modus decimandi.*

Co. ib. 227. a. 4. Co. ib. 154. b. 3 Marton c. 2.

2 If the Meſne recovereth a Rent, when it is a Rent-ſervice, and after the Rent becometh a Rent ſecke by ſur-ſeance, and after the Tenant doth re-diſſeiſe him of the Rent; In this Caſe, the Meſne ſhall have a re-diſſeiſin upon the Statute of Morton 20 H. 3. for, the ſubſtance of the Rent remaines ſtill, though the quality be altered. So if Tenant in ſpecial taile recover in Aſſiſe, and after becommeth Tenant in taile after

Meſne Redi

Co. ibidem.

Tenant iſſue, &

after poſſibility, &c. and then is re-diſſeiſed, he ſhall have a re-diſſeiſin upon the ſame eſtate; for albeit the ſtate of inheritance be altered yet the ſame freehold remaineth.

allenge. 3. If there be a Challenge for Coſinage, he that taketh the Challenge muſt ſhew how the Juror is Coſin: But yet if the Coſinage, which is the effect and ſubſtance, be found, it ſuffereth; for the Law preferreth that, which is material, before that, which is formal. Co.ib.157. a.4

rtgage. 4. Upon a Mortgage, where there is a time and place limited for the payment of the money: Although it be payd at a day before it growe due, or at another place, then which is limited in the deed of mortgage; yet if the mortgagee receive it, that is ſufficient payment; for the time and place of payment are but circumſtances, which ſhall not prejudice, ſo that the ſubſtance, viz. the payment, &c. be performed; There is the ſame Law of an Obligation, &c. Co.ib.212. a.4 Litt. §. 343.

ndition to ſtate eſtate the Wife, thout impeachment of aſt. 5. If a Feoffment be made upon Condition, that the Feoffee ſhall give the land to the Feoffor and his Wife in taile, the remainder to the heirs of the Feoffor: and the Feoffor dies before the feoffment: In this Caſe, (Littleton ſaith §. 352.) that the Feoffee ought to make an Eſtate for life to the Wife without impeachment of waſt, &c. And yet if the Wife ſhall accept of any Eſtate for life without this clauſe, without impeachment of waſt, it is good: becauſe the Eſtate for life is the ſubſtance of the grant, and the privilege to be without impeachement of waſt is a collateral circumſtance, and only for the benefit of the Wife, and the omiſſion of it only for the benefit of the heire: So likewiſe, if the Wife (in that Caſe) take Huſband before requeſt made, and then they make requeſt, and the Eſtate is made to the Huſband and Wife, during the life of the Wife; this is a good performance of the Condition, albeit the Eſtate be made to the Huſband and Wife, where Littleton ſaith it is to be made to the Wife, but it is alone in ſubſtance, ſeeing that the limitation is, during the life of the Wife, &c. Co.ib.219.b 4 Litt. §. 352.

bligation ade beyond a. 6. An Obligation made beyond the Seas may be ſued here in England, in what place the Plaintiffe will: As if it beare date at Burdeaux in France, it may be alleadged to be made in quodam loco vocat. Burdeaux in France in Iſlington in the County of Middleſex, and there it ſhall be tryed: for whether there be ſuch a place in Iſlington or no, is not traverſable in that Caſe, becauſe the place, where it was made, is onely circumſtance, and not of the ſubſtance of the bond, &c. Co.ib.261.b.4

do & for- words of ce, not of ſtance. 7. Theſe words, modo & forma, prout, &c. are in many Caſes but words of form in pleading, and not words of ſubſtance; for if a man bring a writ of entry in caſe proviſo, of an alienation made by the Tenant in Dower to his late inheritance, and counts of the alienation made in fee; and the Tenant ſaith, that he alienes not modo & forma prout, the Demaundant hath declared, and thereupon they are at Iſſue; and it is found by Verdict that the Tenant alienes in taile, as pur d'autre vie: In this Caſe, the Demaundant ſhall recover, yet the alienation was not in manner as the Demaundant had declared: And this Rule holds always true, when the Iſſue taken goeth to the point of the writ or Action: for then modo & forma are but words of forme: But otherwiſe it is, when a collateral point in pleading is traverſed, as if a feoffment be alleadged by two, and this is traverſed modo & forma, and it is found the feoffment of one, there modo & forma, is material: So if a feoffment be pleaded by deed, and it is traverſed, abſque hoc quod fecerit modo & forma, upon this collateral Iſſue modo & forma are not eſſential, that the Jury cannot find a feoffment without deed. Litt. §. 483. Co.ib.281.b.3

8 Lord

Litt. §. 484. 8 Lord and Tenant by fealty ouſly, and the Lord diſtraines the Tenant for Rent, the Tenant brings an Action of Treſpaſs againſt the Lord for his cattle ſo taken, and the Lord pleads, that the Tenant holds of him by fealty and certain Rent, and for the Rent he diſtrained, &c. And the Tenant ſaith, that he holds not of him modo & forma, as he ſuppoſeth, and thereupon they are at Iſſue, and it is found by Verdict, that he holds of him per fidelitatem tantum; In this Caſe, the writ ſhall abate, and yet he held not of the Lord, in manner, as the Lord had alleadged; But the matter of the Iſſue being found, viz. that the Tenant holds of him, that ſufficeth to abate the writ, albeit the Lord diſtraine the Tenant for other ſervices, then are due.

Modo & forma. Lord and Tenant.

Co. lib. 282. a. 1. 9 If A. be appealed, or indicted of Murder, viz. that he of malice prepenſed killed B. A. pleads, that he is not guilty modo & forma, yet the Jury may find the Defendant guilty of manſlaughter without malice prepenſed; becauſe the killing of B. is the matter and malice prepenſed is but a Circumſtance.

Modo & forma. Murder. Manſlaughter.

Co. ib. 2. 2. 10 In Aſſiſe of darrien preſentment, if the Plaintiffe alleadge the avoydance of the Church by priviation, and the Jury find the voydance by death, the Plaintiffe ſhall have judgement: for the manner of the voydance is not the title of the Plaintiffe, but the voydance is the matter, &c.

Darrien preſentment.

Co. ibid. 2. 3. 11 If a Guardian of an Hoſpital bring an Aſſiſe againſt the Ordinary, he pleadeth, that in his viſitation he deprived him as Ordinary, whereupon Iſſue is taken, and it is found, that he deprived him as Patron; yet the Ordinary ſhall have judgement, for, the deprivation is the ſubſtance of the matter.

Deprivation ab Ordinary as Patron.

Co. ib. 282. a. 3. 12 The Leſſee covenants with the Leſſor not to cut downe any trées &c. And binds himſelfe in a bond of 40 pounds for performance of covenants, the Leſſee cuts downe ten trées; the Leſſor brings an Action of debt upon the bond, and aſſigneth a breach that the Leſſee hath cut downe 20 trées, whereupon Iſſue is joyned, and the Jury finds, that the Leſſee cut down ten; yet judgement ſhall be given for the Plaintiffe; For ſufficient matter of the Iſſue is found for the Plaintiffe.

Breach of covenant.

Litt. §. 485. Co. ibid. 282. a. 4. &c. 13 In a writ of Treſpaſs for battery or for goods caried away, if the Defendant pleas not guilty in the manner, as the Plaintiffe ſuppoſeth, and it is found, that the Defendant is guilty in another towne, or at another day, then the Plaintiffe ſuppoſeth, yet he ſhall recover: For in Actions brought for things tranſitory, the wrong being done in one towne, the Plaintiffe may not onely alleadge it in another towne, but alſo in another County, and the Jurors upon not guilty pleaded are bound to find for the Plaintiffe: Neither can the aſſault, battery, taking of goods, &c. alleadged in another County, be traverſed without ſpecial cauſe of juſtification, which extendeth to ſome certain place, as if a Conſtable of a Towne in another County arreſt the body of a man, that breaketh the peace, there he may traverſe the County: Notwithſtanding he muſt not ſay there, but muſt ſay farther, and all other places, ſaving in the towne, whereof he is Conſtable: So it is alſo in an Action for taking of goods: for, in that Caſe alſo, if the Defendant juſtifie for damage feaſant in another County, he may traverſe, as before: But where the cauſe of the juſtification is not reſtrained to a certain place, which is ſo local, that it cannot be alleadged in any other towne (as in the Caſes before alleadged, and the like) then albeit the Action be brought in a forraigne County, yet he muſt alleadge his juſtification

In actions tranſitory the place muſt not be univerſal

in

in the County, where the Action is brought: As if a man be beaten in the County of Middelſex, and he bringeth his Action in the County Buck. the Defendant cannot plead, that the Plaintiffe aſſaulted him in the County of Middelſex, &c. and traverſe the County, but he muſt plead his juſtification in the County of Buck. for that the cauſe of his juſtification is good in any place: So it is likewiſe in Caſe of Batlement of goods, and other Caſes for tranſitory things, as for example: In an Action upon the Caſe the Plaintiffe declared for ſpeaking of ſlanderous words, which is tranſitory, and layd the words to be ſpoken in London, the Defendant pleaded a concord for ſpeaking of words in all the Counties of England, ſaving in London, and traverſed the ſpeaking of the words in London; the Plaintiffe in his replication denied the concord, whereupon the Defendant demurred, and judgement was given for the Plaintiffe; for, the Court ſaid, that if the concord in that Caſe ſhould not be traverſed, it would follow, that by a new and ſubtile invention of pleading, an ancient principle in Law (that for tranſitory cauſes of Action the Plaintife might alleadge the ſame in what place or County he would) ſhould be ſubverted, which ought not to be ſuffered: And therefore the Iudges of both Courts allowed a traverſe upon a traverſe in that Caſe, &c. Now the ground that ruleth all theſe Caſes is this, becauſe the Law reſpects more the cauſe of the Action, which is the ſubſtance of the ſuit, then the place where the Act was done, which is but circumſtance, &c.

Subſtance certainly alleadged, conveyance not.

14 That which is alledged by way of conveyance or inducement to the ſubſtance of the matter, need not to be ſo certainely alleadged, as that which is the ſubſtance it ſelfe: And where a matter of Record is the foundation or ground of the ſuit of the Plaintiffe, or of the ſubſtance of the plea, there it ought to be certainly and truly alleadged otherwiſe it is, where it is but conveyance; becauſe that is but circumſtance, &c. Co.ib.303.a.4.

Plea inſufficient.

15 When a Count, barre, replication, &c. is defective in reſpect of omiſſion of ſome circumſtance, as time, place, &c. there it may be made good by the plea of the adverſe party; but if it be inſufficient in matter and ſubſtance, it cannot be ſalved. Co.l.8.120.b.D.Bouch. Caſe. Co. l. 8. 133. b. 1. *Turners* Caſe.

Ancient pleadings.

16 In the Raignes of E. 2. E. 1. and upwards, the pleadings were nothing curious, but plain and ſenſible, ever having Chief reſpect to matter and ſubſtance and not to formes of words, and were often helpen by a quæſitum eſt, and then the queſtions moved by the Court, and the anſwers by the parties were alſo entred into the rolle, &c. Co.ib.303.b.2 & Co-l.725.a in *Buts* Caſe. Co.ib.304.a.4

Pleading.

17 Albeit a plea as to the forme be groſſe and ignorant, yet if good in ſubſtance, it ſhall be adjudged ſufficient. In Alton woods Caſe. Co.l.1.42.a.4. b. 3. & 52.b.

Time of a deed.

18 If a deed beare date after the delivery, and after the deceaſe of the party to whom it is delivered, yet is it ſufficient: as if an obligation beare date the 4 of April 24 El. and the Obligor delivers it as his deed 30 July 23 El. and the Obligée dies before the date, yet this obligation is good; for albeit the Obligée in pleading cannot alleadge the delivery before the date (as it is adjudged in 12 H. 6. 1.) becauſe he is ſtopt to take averment againſt any thing expreſt in the deed, yet the Iurors, who are ſworne ad veritatem dicendam ſhall not be ſtopt in that Caſe: And the reaſon hereof is, becauſe the date of a deed is not of the ſubſtance of the deed; for if it want date, or have an impoſſible date (as the 30 day of February) yet the deed is good; there being onely three things of the eſſence and ſubſtance of a deed, viz. the writing in paper or parchment, ſealing, and delivery: And if it have theſe three, although it wants, in cujus rei teſtimonium ſigillum ſuum appoſuit, yet the deed is ſufficient; for the delivery is as neceſſary to the eſſence of the deed, as the Co. l. 2. 4. b. *Goddares* ca.

putting of the seals unto it, and yet it is not necessary to expresse in the Deed, that it was delivered, &c. And from hence it may be observed, that if a man bring an Action of debt, and count, that the Defendant 4. Apr. 24. &c. made an Obligation bearing date the same day and years, and the defendant pleads non est factum, and it is found that the deed was delivered at another day, before or after the day that the Plaintiffe hath counted, that yet the judgement shall be given for the Plaintiffe, in as much as the date is not material, and the Defendant cannot be twice charged, &c.

Co. l. 2. 76. a. 4 in the Lord *Cromwels* Ca. Co. l. 5. p. 2. 26 b. 2. the E. of *Rutlands* case accords.

Variance in circumstance betwixt fine & indenture no prejudice.

19 If it be agreed by Indenture, that a fine shall be levied of certain Lands by the name of a certain number of Acres to divers persons, and that they shall grant and render the Land again in Fee-simple, which shall be to certain uses: The fine is levied of the Land, but there is some variance in the number of Acres comprised in the fine, or the fine is levied to one of the parties only, who grants and renders the Land: so that there is variance betweene the Covenant and fine in number and person; Nevertheless (in this Case) the fine shall be adverred to be to the use of the Indentures: For the original bargain and agreement of the parties was declared by writing, and albeit there be some little variance found in quantity, person, time, or such other circumstances, betweene the fine and the Indenture: yet the Law (which in common conveyance hath great respect and regard to the Intent of the parties, and to the substance and effect of their original imagine and agreement) will permit averment to agree the fine and the indenture, notwithstanding those little circumstances of number, person, time, and the like, when the party averres, that there was not any new consideration, or new agreement betwixt the parties but that the fine was levied according to the Indenture, and to the uses and intents contained in the same: and (indeed it is consonant to justice & equity, and principally in common assurances of lands betwixt party & party, that every little variance in circumstance should not subvert all the substance of the agreement of the parties in their indentures to the hurt of one of them: & therefore it was adjudged in Tavernors case about the 42 of El. that if A. hath 10 acres in Dale, & B. hath as many in the same town, and A. levies a fine to B. of 20 acres, and B. grants and renders 20 acres to A. in fee, yet A. shall not have the 10 acres of B. unless there was a special agreement betweene them to that effect; or otherwise the Covenant should be said to render more then he receives, and the difference in the number of acres is but a circumstance, &c.

Co. l. 4. 41. b. 3 in *Heydons* ca.

Indictment.

20 Exception was taken to an Indictment upon the death of a man because these words (in pace Dei & Domini Regis) were omitted; and albeit in Indictment these words are usually inserted, yet the exception was not allowed: because such words are not words of substance, but onely inserted by way of Amplification to aggravate the heinousnes of the crime, &c.

Co. l. 4. 87. a. 1. in *Lutrels* ca.

Prescription a water course Eslovers, Roomes, Window, &c.

21 Where a man prescribes for a course of water to a Fulling-mill, whereas indeed anciently it was a fulling-mill, & of late time was pulled down, and a Grist-mill erected in stead thereof: yet if that water course be turned by a Stranger: In an Action upon the Case, &c. he may well prescribe for the course of water to his fulling-mill as altered as aforesaid: For, the mill is the substance, and the thing to be demanded, and the addition of Grist or Fulling, are but to shew the quality or nature of the mill: And therefore in the Register, and also in F. N. B. it appears that if a man will demand a Grist-mill, Fulling-mill, or any other mill, the writ shall be general, de uno molendino, without any addition of Grist or Fulling, and hereunto agrees 21 Ass. Pl. 27. of a Plaint in Assise;

So

...ses allowable it is much more effectual either by grant or by prescription to the house, albeit it alter the rooms, as chambers of the house (as he makes that the hall which was the parlor, & that the parlor, which was the hall; or make the like alteration of the qualities and not of the house itself, and without making new Chimneys, whereby no prejudice may accrue to the owner of the land: this is no destruction of the prescription; but then many prescriptions should be destroyed: And although he build new Chimneys, or make a new addition to the old house, he shall not thereby lose his prescription: Howbeit he must not employ any of the old vents in the new Chimneys, or in the part newly added; Likewise the same Law of Conduits and Water-pipes, or the like: So if a man have an ancient Watercourse in his land, and after diverts the Water to a Mill or any other use, yet shall it not be lawful for the Neighbour at his pleasure to stop it; So he may prescribe for to have a light in such a part of his house; &c.

...portions ...ed yet the ...y remaines

...s. If a Corporation have Franchises and Privileges, by grant or by prescription, and after they are incorporate by another name; as whereas they were Wardens and Brethren before, now they are Major and Commonalty: Or prius non Extant before; and after erected to be one Corporate; In those Cases, albeit the qualities and name of their corporation is altered and changed, and principally in the Case of Water and Ground (Viz. Regulated, that are Real perfected in Law, they are made Secular.) yet the new body shall enjoy all the Franchises, Privileges, and Hereditaments, which the old Corporation or body Politique had, either by grant or by prescription: because although the name, &c. is changed, yet the body, which is the substance, doth still remain, &c. Co. ibid. b. 1.

...ness of forms ...endable by ...statute

23 If a Count be insufficient in point of sound ability, which the Statute aids to be amended without the information of the Plaintiffe, that may easily be remedied by the Clause in the end of the Statute of 18 Eliz. cap. 14. &c. But in that which is to be supplied in matter of substance: As in Debt upon, If the Plaintiffe alleges, Quod cum talis tunc fuerit, & adhuc existat, &c. without shewing the number of Quarters of the Corn sold, that insufficiency is matter of substance, and not of form to be remedied by that Statute, &c. Co. l. 35. b. 1. in *Playters* Case.

...ules of the ...ct in some ...manner of ...place.

...ght stand, upon the other part built, for that ...ning the Statute of Gloucester, the Writ was ad quæstionem tam diu ...ndi, which ought to stand that all the Clerks whatsoever of the Chancery should desist their Attendance; which quite ...ers the form of the Statute; although the Count be not helped by any Statute, when it is altogether vicious, & it hath been matter of form only, (as in the Case above) although it be only the mistake of the Clerk, yet it shall not be remedied by any Statute: And there ...ught in a Writ of partition the Justices of the Common Pleas inserted this word (mesuagium) which some omitted, whereupon it of Ayle they amended this word, &c. Co. l. 8. ... Co. l. 5. 45. a. *Freemans* Ca.

...rreare ...Kings

...ther the King hath right of entry for default of payment of a quarters Rent, although the office finds no certain arreare, that is what the quarters rent amounts unto, yet that is sufficient for the King, when the Debt is only in arrear for the Rent, and substantial point, which proves the Allegation of the Conclusion is the non-payment of the Rent, every part thereof, and it is not material, when the Rent was ... Co. l. 5. 56. b. 1. *Knights* Case.

Co. l. 6.47.b.2 in *Dowdales* Case.

26 In debt against an Executor the Jury found assets in Regno Hyberniæ, and the verdict was adjudged good, albeit the Assets were found not onely in a Forraigne Country, but in a forraigne Kingdome: for, the finding of assets is the substance, and the place where, is but for pleasage and circumstance: And therefore if an Executor have goods of the Testator in any part of the world (as if the Testator were a Merchant or the like, that had goods beyond Sea) he shall be charged with them as Assets: For the place is but circumstance, &c.

Assets found in any pl

Co. l. 8. 49. a in *John webbes* Case. Vid. Stat. W. 2. c. 24 in 13 E. 1.

27 In ancient time, when the Masters and Clarks of the Chancery, were grave wise men, well versed in the Lawes of the Land (the first sort of them, making writs in difficult Cases onely which were called Brevia Magistralia, and they (by reason of their profound learning) called Masters of the Chancery, the other making Brevia de causa, and therefore called Curiosa) writs were by them exactly formed without fault or error: But now when such learned Clerks sit, the Judges in many Cases give allowance to ancient formes of writ, and puts the partie to make a special Count: and in such Case, when the writ warrants the Count in substance, they adjudge it sufficient; although there be variance in circumstance: For example, the Original writ of Assisa ultimæ præsentationis is formed in these words, quis advocatus tempore pacis præsentavit ultimam personam, quæ nomen est: This forme shall hold, and not be changed, albeit the incumbent resigned, as appeareth in 18 E. 2. Tit. Assise de darreine presentment. &c. F. N. B. 53. h. Also the writ of Warr. Carr. is formed in these words, Quòd juste, &c. warrantized B. unum messagium in D. &c. Quod cartam habet, &c. yet if he be bound to warranty by force of an exchange, or by homage ancestrel, the form of the writ shall not be altered. Vide 9. E. 4. 49. 21 H. 6. 28. &c. F. N. B. 134.

Writs orig used though the Case v in circumstance.

Co. l. 8. 96. b. 2. in the Lord *Staffords* Case

28 The Law never requires circumstance, when thereby the substance may be subverted: As if the King grant Land to I. S. for life, with Condition that I. S. pay at the Exchequer such a day xx s. to the Kings use, that then he shall have it, and I. S. pays the xx s. accordingly: Although it be regularly true, that the King by reason of the Majesty of his person is alwaies taken to depart with any thing, but by matter of Record, (yet in this Case) I. S. shall have fee in the Land, and the Fee-simple shall be out of the King immediately upon the payment of the xx s. without petition, monstrance de droit, or any other such circumstances, for if the Estate shall not best before such circumstance, then it cannot best presently, and if it best not presently; it shall never best: because the Estate be not enlarged at the appointed time of the enlargement it shall never be enlarged: and therefore (in such Case) the Fee-simple (for a reall title taken) shall passe out of the King without any such circumstance: for (as is said before) the Law never requires circumstance: without that may subsist the substance: And with this agrees the reason in the Lord Lovels Case in Pl. Co. and in Abbot Gould-chapes Case in 49 E. 3. 15.

Circumstance not requisite when it will subvert the substance.

Co. l. 8. 161. a. 4. in *Blackamores* Case.

Pleas &c. Pleas, scripturæ, deprecations, &c. and regularly matter of substance in them, and especially matters of fact, shall not be amended in an other term, as omission of averment, & hoc paratus verificare, &c. (for in some Cases as in averring that is not necessary) still to omit, subsists of course, and wherein the mistake of the Clerk is plain, may be amended, &c.

Pleas, &c. amended.

Co. l. 9. 67. a. 4. in *Mackalley's* Case for killing the Serjeant of *London*.

29 In Mackalley's Case, the Indictment was, that the Sheriffe of London by Warrant to the Defendant, to arrest the Delinquent, who upon it appeared by the Record, that no Warrant at all was made but that by the Custom of London, after Plaint entred, the Serjeant might

An indict good, though perfaced cumstanc

arrest

arrest him without warrant or precept, and yet the indictment was adjudged good: for it sufficeth, if the substance of the matter be found without any curious regard to the circumstance: And therefore, if a man be indicted, that he with a Dagger gave to another a mortal wound, whereof he died, and upon the evidence it is proved, that he gave the wound with a Dagger Rapier, Stake, or Bill; in this case, the Offender ought to be found guilty; For the substance of the matter is, that the party indicted gave him a mortal wound, whereof he died, and the circumstance of the manner of the weapon is not material in case of an indictment; yet such circumstance ought not to be omitted, but some weapon ought to be mentioned in the indictment; so if A. B. and C. be indicted for killing of I. S. and that A. struck him, and that the other were present, procuring, abetting, &c. and upon the evidence it appears that B. struck him, and that A. and B. were present. In this case the indictment is not pursued in the circumstance, and yet this is sufficient to maintain the indictment; for the evidence agrees with the effect of the indictment, and so the variance of the circumstances of the indictment is not material; because it shall be adjudged in Law the stroke of each of them, and it is as strongly the act of the other two, as if all three had struck with the Stake, &c. together, and all had killed him that was slain: And with this agrees Pl. Com. 98. a. So if one be indicted for murdering another upon malice prepense, and he is found guilty of Man-slaughter, he shall have judgment upon that verdict; for the killing is the substance, and the malice prepense is the manner of it; and when the matter is found, judgment shall be given thereupon, although the manner be not precisely pursued; and with this also agrees Pl. Com. 101. where it is further said, that, when the substance of the fact, and the manner of the fact are put in issue together, if the Jurors find the substance, and not the manner; judgment shall be given upon the substance. And this is the reason, that in case of killing a Minister of Justice in the execution of his Office, the indictment may be general, viz. that the prisoner felonicè, voluntariè, &c. ex malicia sua præcogitata, &c. percussit, &c. without alledging any special matter: and (in that case) the evidence will well maintain the indictment; because the Law implies malice prepense, &c. So likewise if one be indicted as accessory to two, and he is found accessory to one, yet the verdict is good, &c. Co. l. 9. 119. a. 2 in the Lord *Southams* Case.

Trespass for suppression of Common. 31 In trespass upon the case for suppression of Common, the plaintiff saith, that the Defendant put his Cattle upon the Common, and that they depastured there, from the 1 of May till Michaelmas, the Defendant pleads not guilty, and it was found by special verdict, that the Cattle depastured there, &c. but that the Defendant put them not upon the Common: And (in this case) albeit it was argued by the Defendants Council, that the Jury had not found the wrong, whereof the plaintiff complained; because he complained of a Misfeasance, and they had found a Non-feasance; for the plaintiff counted that the Defendant posuit averia sua, &c. and the Jurors found quod non posuit, &c. but that the Cattle did depasture, &c. which might be by estrays, which is a Non-feasance, &c. Nevertheless (notwithstanding that allegation) the action was adjudged maintainable enough. For Judges in finding of verdicts rather respect substance than circumstance, &c. Co. l. 9. 112. a. 3 in *Robert Mayes* Case.

Informal exclusion will not prejudice. 32 In an Attachment upon a Prohibition the plaintiff alleadgeth unity of possession of the Rectory and land in a Prior and his Predecessors sole, and at the dissolution, &c. and then concludes, ratione cujus, idem nuper Prior, & omnes alii priores, &c. per totum tempus prædictum, Co. l. 11. 10. a. 4 in *Priddle* and *Nappers* Case.

ſtum, &c. habuerunt & tenuerunt, &c. præfati verè exonerat, &c. [illegible] de omnimodis decimis, &c. whereas (in truth) by the unity of poſſeſſion the land was not diſcharged of tythes, but of the payment of tythes, &c. and therefore the concluſion in that point was not formal: Nevertheleſs (in this caſe) in as much as the preſcription it ſelf was well alledged in ſubſtance, ſo that the miſtaking the manner of the concluſion and conſequent thereupon (which is but a circumſtance) ſhall be no cauſe of granting a Conſultation, &c.

Co. l. 11. 78. a. 4 in *Magdalen* Colledge's Caſe.

33 When the Grantor is a perſon able to grant, and hath paſſed it over the land, and the Deed is good and legal; but ſome little circumſtance, as inſtrument of the like, ſuch a Deed as mine ought and muſt confeſſe is ſupplied by the Statute of 27 Eliz. 4. (for the more formation of Patents of Grants made by the Queen) becauſe that ſtatute makes the conveyance good, according to the true intent and purport thereof, which is the ſubſtance, and therefore in ſuch caſe want of circumſtance ſhall not prejudice, &c.

18 Eliz. 1. ſupplies circumſtance.

Pl. Co. 65. b. 2. in *Dive* and *Maninghams* Caſe.

34 When a Record is to be pleaded in Bar, it ought to be alleaged [illegible] certainly recited; becauſe (in ſhort) the Record alleaged is the matter of ſubſtance, and the effect of the bar, which ought to be full and perfect; but when the recital of a Record is nothing but conveyance to another matter, and not the effect of the bar, but only an inducement to the bar, & conveyance thereunto: it is not neceſſary that ſuch conveyance by inducement ſhould be ſo certainly pleaded, as the matter it ſelf ought to be. As in Dive and Maninghams Caſe in the Commentaries, it is ſufficient to begin at the Habendum, and not to recite the whole Record of that part, becauſe that is but Matter of Inducement to the matter of the Liberties done, which the Statute makes good; more upon the matter but merely circumſtance; for likewiſe, if a man by Elegit makes an Attorney to Replegiare, having let Land to a Stranger rendring Rent, &c. if he ſue out the Writ of Record, whereby the Record remain by Elegit, this is ſufficient, as 34 H. 6. 48. Avowry 26. B. *Monſt. de faits* 10. 19 H. 6. 12. 9. Detein, pl. 8. Bill 9. becauſe that is but a circumſtantial conveyance to the matter of the fact, &c. [illegible] againſt the Attorney of the Plaintiff, declaring, that the Writ of Record ſpeaks in plaints of Land, appears Bonadon brought the Plaintiff and another, and judgment was demanded of the bill, becauſe the whole Record was not recited in certain; but the bill was adjudged good, notwithſtanding it is not recited certainly because the Record was but circumſtance, and not conveyance to the fact in Deceit, &c.

34 H. 6. 48. Avowry 26. B. *Monſt. de faits* 10. 19 H. 6. 12. 9. Detein, pl. 8. Bill 9.

Conveyance to an action need not be certainly pleaded.

Pl. Co. 81. b. 2 *Partridges* Caſe.

35 The Deſt upon the Statute of 32 H. 8. cap. 31. for granting to Leaſees power to Leaſe, impowers the Leſſee upon voluntary title, the Plaintiff counts, that the Defendant by colour of letters patents, (indentedly) without ſetting in certain the Letters patents; this exception was taken upon pleading, becauſe the number of Acres was not expreſſed in certain, &c. But it was adjudged that it was not neceſſary to ſpecifie the ſeveral number of Acres, becauſe the cauſe the Leſſee was but conveyance to the uſe [illegible] then that, which is nothing unto the conveyance, ought not to be certainly ſhewn, as that, which is circumſtance unto the conveyance: Decies tantum all the Records ſhall not be ſhewn in certain, but only ſuch part thereof, which concerns the matter in iſſue: but if a Writ of Judicial Title be of a Record, in that caſe the Record ought to be certainly recited, becauſe the Writ is the action and ſubſtance, and not conveyance only, as in the other caſe, &c. For there, the

Stat. 32 H. 8. againſt defective titles.

ſhe is

ſhewing of the beginning and end of the terme is to no other purpoſe, then for the ſhewing of the length and ſhortneſſe of the time, and that is not there material; becauſe in ſuch caſe if the Leaſe were made onely for an houre, or for an hundred yeares, it is all one, as if Leſſee for life is charged, that he ſhall not alien in fee, &c. If he alien onely in tail, that is a forfeiture; So (in that caſe) alien he for a ſhort time, or for a long time, it is all one: Howbeit, if he were to recover according to the value of the Leaſe, then the beginning and end thereof ought to be ſhewed in certain; And therefore in ſuch caſe even in a Decies tantum the certainty of the money ought to be ſhewed; for he ſhall recover ten times the value or quantity thereof, and then to expreſſe the value thereof in certain, is of ſubſtance, &c. Pl. 3. 85. b. 2.

meant for
er found
ſlaughter,
&c.

36 If a man be indicted for Murder, and the Jury finds him guilty of Man-ſlaughter onely, yet the Judge may give judgment upon him, viz. that he ſhall be hanged for the Man-ſlaughter; for the jury may give their verdict at large, and find the whole matter; as if one be arraigned for the death of a man, and pleads not guilty, the Jury may find, that he did kill him in his own defence: So in the other caſe, when the priſoner is arraigned for killing a man upon malice præpenſe, the ſubſtance of the matter is, whether he killed him or no, and the malice præpenſe is but of the form or circumſtance of killing him: And albeit the malice præpenſe makes the act more odious (and for that cauſe the offender ſhall loſe divers advantages, which otherwiſe he would have, as Sanctuary, Clergy, and the like) yet that is (indeed) nothing elſe but the manner of the fact, and not the ſubſtance thereof; for the ſubſtance of the fact is the killing of the man, and then when the ſubſtance of the fact and the manner of the fact are put in iſſue together, if the Jurors find the ſubſtance, and not the manner, yet judgment ſhall be given for the ſubſtance: As if a man arraigne an Aſſiſe for Diſſeiſin with force, and the Defendant pleads to the generall iſſue, and the Jurors find the Diſſeiſin, but not with force, yet the Plaintiff ſhall have his judgment; for the wrongful expulſion was the ſubſtance, and the force was the manner, and then when the ſubſtance is found, he ſhall have judgment thereupon, and ſhall be acquit of the force, &c. Pl. Co. 101. b. 1. *Saliſburies* Caſe.

King is
ſtely
before
nation,

37 The King of England immediately after the Predeceſſors demiſe of the Crown is abſolutely King without the Ceremony of Coronation, or any other act to be done ex poſt facto; for, the Law doth reſpect his title to the Crown, by birth, right, and deſcent, and not the circumſtance of Coronation, which is (indeed) a Royal ornament, and ſolemnization of the Royal deſcent; but no part of the title: Howbeit in 1 Jac. before his Coronation Watſon and Clerk (ſeminary Prieſts) and others were of opinion, that the King was no compleat and abſolute King before his Coronation, but that Coronation did adde a confirmation and perfection to the deſcent; And therefore (obſerve their damnable and damned conſequent) that they by ſtrength and power might before his Coronation take him and his Royal iſſue into their poſſeſſion, keep him priſoner, remove his Counſellors, and conſtitute others in their places; and that theſe acts and others of like nature could be no treaſon before he were crowned: but it was reſolved by all the Judges of England, that preſently by the deſcent his Majeſty was compleatly and abſolutely King, without any eſſential Ceremony, or act to be done ex poſt facto, and that Coronation was but a Royal ornament, and outward ſolemnization of the deſcent, as is aforeſaid, and as it appeares evidently by infinite precedents and Book caſes, which ſee in the Book at large, &c. Co. l. 7. 10. b. 4. in *Calvins* Caſe.

38 In

Co. l. 2. 33. b. 4 in Tooley's Caſe. Pleading.

38 In an action of Debt brought againſt an Executor, he pleads the recoveries againſt him in a Court of a Corporation, (being a Court of Record, which amount to the iſſue in law, but ſheweth not in his Court, that the Corporation hath juriſdiction to hold Court, either by preſcription, or by patent; And it alſo appeares by the Count in that Court, that the Action of Debt was brought for 10 l. without mentioning any obligation, and therefore it was to be intended, that there was no obligation; and then the Executor was not chargeable in an action upon a ſingle contract; And in this caſe, albeit the Defendant in his barre acknowledges, that the Debt was by obligation, yet that ſhall not make the Count good; for when the Count wants circumſtance of time or place, &c. that may be made good by the barre, but when the Count, Barre, Replication, or, &c. wants ſubſtance, this cannot be made good by the plea of either party.

Co. l. 5. 71. a. l. in Sir Iohns Caſe. Dagger is one with Handgun.

39 A Dagge is as well prohibited to be carried about one, as an Handgun by the Statute of 33 H. 8. 6. albeit a Dagge is not named in that Statute, nor was then invented; becauſe a Dagge differs not from a Handgun in ſubſtance, but hath onely ſome ſmall alteration in form and quality.

Co. l. 2. 120. b. 3 in Doctor Bonhams Caſe. Pleading.

40 When the Count or Declaration wants time, place, or other circumſtance, it may be good by the barre, and the barre by the replication, &c. as appears by 13 E. 4. 16. b. but when the Count wants ſubſtance, the barre cannot make it good, and ſo it is alſo of the barre, replication, &c. and with this accords 6 E. 4. 2. Bon. Caſe.

Dier 19. 113. 28 H. 8. A bond without date good.

41 An obligation was thus drawn, Ad quam quidem ſolutionem bene & fideliter ſolvend. obligo me per preſentes, dann. &c. and ſaith not Sigillo meo ſigillat. nor In cujus rei teſtimonium; yet by Shelley and Fitzherbert it is ruled good, if it were ſealed; for that is of ſubſtance, the other being but circumſtances.

Co. l. 10. 124. b. 2. Wingates Caſe. Name of a Corporation.

42 The Dean and Canons of Windſor were incorporate by act of Parliament in 22 E. 4. by this name, The Dean and Canons of the Kings free Chappel of St. George the Martyr within his Caſtle of Windſor; and in the Reigne of P. and M. they make a Leaſe of certain lands by this name, The Dean and Canons of the King and Queens Free Chappel of St. George within the Caſtle of Windſor: And in this caſe three variances were obſerved, 1 Becauſe it was named the King and Queenes Free Chappel, whereas it ſhould have been onely named the Kings. 2 It ought to have been St. George the Martyr, whereas Martyr was omitted; 3 It was ſaid within the Caſtle, whereas it ſhould have been within the Kings Caſtle. In this caſe, the firſt onely was adjudged a material exception, and of ſubſtance, but the other two onely matter of circumſtance, and not material, and ſo the Leaſe adjudged void for the firſt.

Dyer 98. a. 50. 1 Mar. Supremum caput Eccl.

43 Albeit in the ſummons of Parliament of 1 Mar. theſe words ſupremum caput Eccleſiæ Anglicanæ, &c. were omitted contrary to the Statutes of 26 and 35 H. 8. yet by the better opinion the ſummons is good, becauſe it was but an Addition or circumſtance, and not parcel or of the ſubſtance of the name of the Queen: This doubt was alſo moved in the Parliament of 1 El. 2. and upon great deliberation ſo like wiſe reſolved.

Dyer 150. 85. 3, 4, P. M. A void Leaſe.

44 The Corporation of Eaton College was erected by H. 6. per nomen præpoſiti & Collegii Regalis Collegii beatæ Mariæ de Eaton, &c. And in the time of E 6. a Leaſe was made per nomen Præpoſiti & ſociorum Collegii Regalis de Eaton, omitting Collegium and Beatæ Mariæ, and adjudged naught, &c.

45 The

eal.

45 The Lessee of a Parson brings an ejectione firmæ, the Defendant pleads, that the Parson was deprived, the Plaintiffe saith, that the Parson hath appealed to the Arch-bishop of Canterbury in Curia prærogativa sua de Arcubus: and because the Words of the Statute of 24 H. 8. 12. are, that the appeale shall be to the Arch-bishop of the Province, or, &c. without limiting any Court in certain, the Defendant demurred in Law: And it was held by the Justices, that the Words to the Archbishop of Canterbury being Words of substance were sufficient to maintain the plea, and that the other Words being but circumstantial and surplusage should not prejudice the Plaintiffe. Dier. 240. 46. 7 El.

omer.

46 The Deane and and Chapter of Carleil being incorporate by the name of the Deane and Chapter Ecclesiæ Cathedralis Sanctæ & individuæ Trinitatis Carleil, make a lease by the name of Decanus Ecclesiæ Cathedralis Sanctæ Trinitatis in Carliel, & totum Capitulum de Ecclesia prædicta: And by the opinion of the Justices against them, it was held good, notwithstanding that variance, because it is not of substance of the name: Vide 35 H. 6. 4, & 5. A Prior sues by the name of Ecclesia Sancti Petri, whereas the foundation was Petri & Pauli and adjudged not good because of substance. Dier 278. 1. 11 El.

plevin.

47 Pope brings a Replevin against Skinner, who avowes the taking as a Commoner in April 11 Jac. the Plaintiffe in barre saith, that one Williams was seised of an house and land, &c. whereunto he had Common, &c. and demised the same unto him the 30 day of March in the same 11 yeare; to hold from the Feast of the Annunciation next before for a yeare. The Avowant traverseth the lease modo & forma, whereupon issue is taken, and the Jury said, that Williams made a lease to the Plaintiffe, on the 25 day of March for one yeare from thence next insuing: And albeit this was not the same lease, that the Plaintiffe pleaded (for this begins on the day, and the other not so soone) nor was to take his limitation, but from the day excluded, yet the Court gave judgement for the Plaintife: for the substance of the issue was, whether or not the Plaintiffe had such a lease from Williams as by force thereof he might Common at the time, which appeareth for him in this Case, and the modo & forma in the rest is not material, &c. Hob 72. *Pope and Skinner.*

Vide Hob. 76. Parker and Parker 117. Napper and Jasper 133. Moon and Andrews.

102 Yet for memory and solemnity substances are to be expresst under Ceremonies.

ations de- nce must be ade.

1 In all Actions real, personal, or mixt, albeit the Tenant or Defendant appeareth, and pleads a sufficient barre, yet if he makes not in his plea a lawful defence, (as in personall actions to say, & prædictus C. D. defendit vim & injuriam quando, &c. & damna & quicquid quod ipse defendere debet, &c.) judgement shall be given against him. Co. Inst. p. 1. 127. b. 3.

juration.

2 Albeit in 8 E. 2. Abjuration (indefinitely) is called a divorce between the Husband and Wife; yet every abjuration is not so; for such abjuration as amounts to a divorce ought to be either by authority of Parliament, or upon ordinary proceeding in Law, as in the Case of Tho. of Weyland in 19 E. 1. Nevertheless (in that Case) proceeding in Parliament or at Law are but in the nature of circumstance, &c. Co. ib. 133. a. 3

Co.lib.137.b.3

3 By the wiſdome of our Anceſtors a great mark of ſolemnity was uſed in the manumiſſion of Villains, to the end the memory thereof might take the deeper impreſſion in the minds of the Aſſiſtants, for which this was the old Rule, Qui ſervum ſuum liberat, in Eccleſia, vel Mercato, vel Comitatu, vel Hundredo coram teſtibus & palam faciat, & liberas ei vias, & portas conſcindat apertas, & Lanceam & Gladium, vel quæ libertatis arma, in manibus ei ponat, &c. Manumiſſion of Villeins.

Co.lib.143.b.1 & 219.a.3. & Co.l.5.20.b. *Stiles* Caſe.

4 A deed cannot be a deed inventive, unleſſe it be actually inventoried: For, albeit the words of the deed be, Hæc indentura, &c. yet if it be not invented indeed, it is no inventure: but if the deed be inventoried, albeit the words of the deed be not, Hæc indentura, &c. yet it is an inventure, &c. A deed inventoried.

Co.lib.152.a.4 & Co.l.5.112.b.1. in *Mallories* Caſe.

5 If a Leaſe for life be made, reſerving a Rent upon Condition, &c. And the Leſſor levies a fine of the reverſion to a ſtranger; In this Caſe, albeit the Conuſee is Grantee or Aſſignee of the Reverſion, and ſo ſeemes to have power given him of taking advantage of the Condition by force of the Statute of 32 H.8. cap.34. Nevertheleſſe without Attornment he ſhall not take advantage of the Condition: For, the makers of that Statute intended to have all neceſſary Ceremonies and Incidents obſerved, otherwiſe it might be miſchievous to the Leſſee, &c. Attornment neceſſary.

Co. ibid. 216. Litt. § 349.

6 If Land be Granted to a man for three yeares upon Condition, that if he pay to the Grantor within the ſaid three yeares 40 marks, that then he ſhall have Fee: But the Grantor gives him no Livery: In this Caſe, albeit he pay the 40 marks within the two yeares, yet he ſhall not have Fee: Becauſe there is wanted the Ceremony of Livery: It had been otherwiſe if Livery had been made unto him, &c. Livery.

Co.lib.218.a.3

7 Regularly when any man will take advantage of a Condition, if he may enter he muſt enter, and when he cannot enter, he muſt make a claime: And the reaſon is for that a free-hold and inheritance, ſhall not ceaſe without entry or claime; As if a man Grant an Annuity to a man and his heires upon Condition, that if the Grantor, &c. pay 20 li. on ſuch a day, &c. the Eſtate of the Grantee ſhall ceaſe, and be utterly void: The Grantor payeth the money, yet the Eſtate is not revested in the Grantor before a claime, and that claime muſt be made at the Church: And ſo it is likewiſe of a Reverſion or remainder, of a Rent, Common, or the like: For there alſo muſt be a claime before the Eſtate be revested in the Grantor by force of the Condition, and that claime muſt be made upon the Land: A fortiori in Caſe of a feoffment, which paſſeth by Livery of ſeiſin, there muſt be a re-entry by force of the Condition before the Eſtate be void. Free-hold & inheritance cannot be revested without entry or claim

Co. ibid.

8 A man bargaineth and ſelleth Land by deed inrolled with proviſo, that if the bargainer pay, &c. that then the Eſtate ſhall ceaſe and be void, he payth the money, the Eſtate is not revested in the Bargainer before re-entry: And ſo it is if a bargaine and ſale be made of a Reverſion, Remainder, Advowſon, Rent, Common, &c. So it is likewiſe if Lands be deviſed to a man and to his heires upon Condition, that if the deviſee pay not 20 pounds at ſuch a day, that his Eſtate ſhall ceaſe and be void, the money is not payd, the Eſtate ſhall not be veſted in the heire before an entry: And ſo it is alſo of a Reverſion, Remainder, Advowſon, Rent, Common, or the like. Idem.

Writings must be in parchment or paper.

9 All Deeds and Writings ought to be made in Parchment, or Paper: For if a writing be made upon a piece of wood, or upon a piece of linnen, or in the barks of a tree, or on a ſtone, or the like, &c. and the ſame be ſealed and delivered, yet it is no deed; for a deed muſt be written in Parchment or Paper; Becauſe a writing upon ſuch materials is leaſt ſubject to alteration and corruption. Co. lib. 11. 29. a. 3.

Ley, Stat. 32 H. 8.

10 It is agreed in 28 H. 8. fol. 28. that where the Statute of the 27 H. 8. c. 10. of Uſes provides, that the actual poſſeſſion ſhall be adjudged according to the uſe, &c. yet all circumſtances, (required by the Common Law) are to be obſerved, viz. actual entry de facto. Co. lib. 5. 112. b. 3. in *Malories Caſe.*

A free-hold without livery, or &c.

11 Tenant in tail of an Houſe entring into it, ſaith thus; Brother, I here demiſe unto you my houſe as long as I live, paying 20 li. per annum unto me, & you finding meat, horſe, &c. this amounts not to a demiſe for life: Becauſe there wants livery, or ſome Act, which the Law adjudged livery, or at leaſt apt words, which amount thereunto; for delivery of a Charter is an Act: but the Law doth not adjudge that livery, becauſe it hath another effect, viz. to make the Charter his deed, as it hath been adjudged, but delivery of a turf, ſtick, or any thing elſe, which comes from the land, or of the ring of the door is good livery: ſo if he ſaith enter and enjoy it, &c. that is good, although out of the land, if within view; for, that is a delivery of the land it ſelf: 27 Aſſ. 61. after delivery of the deed upon the land, to ſay, have and enjoy the land according to the deed, this is good livery: ſo 41 E. 3. 17. after delivery, &c. upon the land he ſaith, enter, God give you joy, this is good. 37 H. 8. Fooſmeres Br. Co. lib. 6. 76. *Sharpes* Caſe.

No new leaſe before entry.

12 Grants a leaſe for years by Indenture the Leſſee covenants and grants, that if he his Executors or aſſignes alien that it ſhall be lawfull for the Leſſor to re-enter; and after makes his Wife his Executrix and dies, the Feme takes a new Baron; who aliens, and the Leſſor enters a new leaſe before entry: In this Caſe the new leaſe is not good, being made before entry, for albeit entry be but in the nature of a circumſtance or circumſtance, yet in ſuch Caſe and others of like kind it is neceſſary for the Leſſee to make his entry before he can be capable of making a new Leaſe. Dier 6. 28 H. 8. 1. &c.

Attornment.

13 If William purchaſe a reverſion, his Lord may not claime it before attornment be made by the Tenant of the land to the William, for if he make his claime after the grant and before attornment, ſuch claime is void, yet attornment is (upon the matter) but a bare ceremonie. Co. Inſt. p. 1. 119. b. 2 Lit. §. 179.

Nomine pœnæ

14 A nomine pœnæ is not recoverable without an actual demand of the Rent, for the non-payment whereof it became forfeited. Hob. 133. *Howel* and *Sambach.*

103 Things executed and done more, then executorie, and to do. *Vide* 40. 51.

Livery in view without entry void.

1 A livery in view (otherwiſe called a livery in Law) is good to convey the Eſtate to the feoffee, &c. if he make entry, and ſo the Eſtate be executed during his life and the life of the feoffor, but if either of them die before entry, the livery is void. Co. Inſt. p. 1. 48. b. 3

Exchange not executed void.

2 In exchange of Land the parties have no free-hold in them in deed or Law, before they execute the ſame by entry; and therefore if one of them die before the exchange be executed by entry, the exchange is void: Co. lib. 11. b. 2.

void: for the heir cannot enter and take it as a purchaſor, becauſe he was named onely to take by way of limitation of eſtate in courſe of deſcent.

Co. lib. 51. b. 4. 3 If a man let lands to another for term of yeares, albeit the Leſſor die before the Leſſee enter, yet he may well enter into the ſame lands after the Leſſors death, becauſe (in caſe of a Leaſe for yeares) the eſtate is executed, (and the intereſt of the term doth paſſe, and veſt in the Leſſee) before entry; And therefore the death of the Leſſor cannot devеſt that, which was veſted before. Intereſt in Leaſe for yeares good without entry, &c.

Co. lib. 52. b. 4. 4 If the Leſſor by his Deed licence, the Leſſee for life or yeares (who is reſtrained by Condition not to alien without licence) to alien, and the Leſſor dieth before the Leſſee doth alien, yet is his death no countermand of his licence, but that he may alien; for, the licence exempteth the Leſſee out of the penalty of the Condition, and it was executed on the part of the Leſſor, as much as might be: And ſo it was reſolved M. 3. Jac. in Com. Ba. So likewiſe if the King licence to alien in Mortmaine and dieth, the licence remaineth good, notwithſtanding the Kings death, &c. Licence when good after the Leſſors death.

Co. Inſt. p. 1. 76 b. 3. 5 If one levie a Fine executory (as ſur grant and render) to a man and his heires, and he, to whom the land is granted and rendred, dieth before execution, and his heir being within age entreth; In this caſe, he ſhall not be in Ward, For, his anceſtor at the time of his death was not tenant to the Lord: becauſe the Fine was not executed, &c. Upon a fine executory no Wardſhip.

Co. lib. 128. b. 1. 6 Upon plea in diſability of the perſon by reaſon of Out-lawry, before the Defendant can diſable the Plaintiffe, the Out-lawry muſt be perfectly executed, and appear upon Record; for, the judgment after the Quinto exactus given by the Coroners in the County Court, is not ſufficient; but the Writ of Exigent muſt be returned; becauſe before the Return of that Writ it is not perfectly executed, nor doth appear upon Record, &c. Out-lawry not perfect, before the return of the Exigent.

Co. lib. 130. a. 4. 7 A man in execution in ſalva cuſtodia ſhall not be deliver'd by a protection; for then the ſuit is executed, and the Law hath her courſe. After execution no protection.

Co. lib. 131. a. 3. 8 In judicial Writs, which are in nature of actions, where the party hath day to appear and plead, (and therefore yet ſomewhat is not) a protection doth lie, as in Writs of Scire facias upon Recoveries, Fines, Judgments, &c. Albeit, by the Statute of W. 2. cap. 45. eſſoignes and other delayes are ouſted in Writs of Scire facias; yet a protection doth lie in the ſame; ſo it is in a Quid juris clamat, and the like. But in Writs of execution, as Habere facias ſeiſinam, Elegit, execution upon a Statute, Capias ad ſatisfaciendum, fieri facias, and the like, no protection can be caſt for the Defendant, for then the ſuit is ſtayed; Neither hath the Defendant then any farther day in Court, and the protection extendeth onely ad placita & querelas; and muſt be allowed by the Court, which cannot be but upon a day of appearance. Writs of execution admit no protection.

Co. lib. 139. a. 2. 9 In a Quare Impedit, if the Plaintiffe be non-ſuit after apparence, the Defendant ſhall make a title, and have a Writ to the Biſhop: And this is peremptory to the Plaintiffe, and a good barre in another Quare Impedit; And the reaſon is, for that the Defendant had by judgment of the Court a Writ to the Biſhop, which is a judicial Writ, and in the nature of an execution: And therefore the Incumbent that cometh in by that Writ ſhall never be removed, which is a flat barre as to that preſentation; And of this opinion is Littleton in our Books: And the ſame Law and for the ſame reaſon it is, in caſe of a diſcontinuance. In a Quare impedit non-ſuit or diſcontinuance a good barre.

Co. lib. 139. a. 3. 10 In an Attaint, if the Plaintiffe after apparence be non-ſuit, it is peremptory; but if the proceſſe in the attaint be onely diſcontinued, the Plaintiffe may have another Writ of Attaint; becauſe upon the non-ſuit there is a judgment given, but not upon the diſcontinuance, &c. In Attaint non-ſuit peremptory.

11 After an award to account; the Plaintiffe may be non-suit; because that is only an interlocutory award of the Court, and no final judgment. Co.lib.139 b.a

12 If there be two joyntenants of an estate in Fee simple, and one of them acknowledgeth a Recognisance, or a Statute, or suffereth a judgment in an action of Debt, &c. and dieth before execution had, it shall not be executed afterwards, but if execution be sued in the life of the Conusor, it shall bind the Survivor: So, if a Villein purchase lands, and binde himself in a Recognisance, &c. if the Lord enter before execution, the Lord shall avoid it; But where execution thereof is had before seisure, the Lord shall be bound thereby, &c. Co.lib.184 b.a

13 If a man grant an Annuity pro una acra terræ, or pro decimis, &c. or pro concilio, or quod pasturet concilium, and the Lord is evicted, the tythes disturbed, or the Counsel refused; In these cases the Annuity ceaseth, because this word pro sheweth the cause of the Grant, and therefore amounteth to a Condition, and then (according to the Rule) cessante causa cessat effectus: But if A. pro consilio impenso, &c. make a feoffment or a Lease for life of an acre, or pro una acra terræ, albeit he denyeth Counsel, or that the acre be evicted, yet A. shall not re-enter, because in this case there ought to be legal words of condition or qualification; for, the cause or consideration shall not avoid the Estate of the Feoffee; And the reason of this diversity is, for that the state of the land is executed, and the annuity is onely executory. Co.lib.206.a.b.

14 There is a diversity between a Condition annexed to a state in Lands or Tenements upon a Feoffment, Gift in tail, &c. and a Condition of an Obligation, Recognisance, or such like; for if a Condition annexed to Lands be possible at the making of the Condition, and become impossible by the Act of God, yet the estate of the Feoffee, &c. shall not be avoided: As if a man maketh a Feoffment in Fee upon Condition, that the Feoffor shall within one year go to Paris, &c. and presently after the Feoffor dieth, so as it is made impossible by the Act of God, that the Condition should be performed; yet (in that case) the estate of the Feoffee is become absolute; for, though the Condition be consequent to the state, yet there is a precedency before the re-entry, viz. the performance of the Condition, and the state of the Lands is executed and setled in the Feoffee, and cannot be redemed back again, but by matter subsequent, viz. the performance of the Condition: So it is also, where the Condition is, that the Feoffor shall appear in such a Court the next Term, and before the day the Feoffor dieth, for (in that case also) the estate of the Feoffee is absolute, &c. But if a man be bound by Recognisance or Bond with Condition, that he shall appear the next Term in such a Court, and before the day the Conusor or Obligor dieth, the Recognisance or Obligation is saved, because the Bond or Recognisance is a thing in Action, and executory, wherein no advantage can be taken, until there be a default in the Obligor, &c. In like manner, if a man make a Feoffment upon Condition, that the Feoffee shall kill I. S. In that case, albeit the performance of the Condition be malum in se, and therefore the Condition it self meerly void, yet the estate is absolute, because executed, and setled, &c. But if a man make a Bond upon Condition, that he shall kill I. S. the Condition being unlawful, as before, and the Bond a thing onely in action executory, they are both void, &c. Co.lib.206.b.

15 Where an Estate or Lease is ipso facto void by a Condition or Limitation, no acceptance of the Rent after, can make it to have a continuance: Otherwise it is of an Estate or Lease onely voidable by entry. Co. Inst. p. 1. 215.a.1.

16 R.

Co.lib.226.a.b. 16 R. brought Ejectione firmæ against E. for eighteen Messuages, which he held for years of the Demesne of C. E. pleads that B. gave the land to P. and K. his wife in tail, who had issue E. the Defendant; and after the Donees enfeoffes C. upon condition to render the land to R. for years, the remainder to P. and K. &c. C. doth render the land to R. but kept the reversion; whereupon K. the wife after her husbands decease entred upon R. &c. so the Condition broken, and then, after whose decease the Land descended to E. now Defendant: Judgment si Actionem &c. Here, exception was taken to this plea, because E. maintained his entry by force of a Condition broken, and shewed forth no Deed: But the plea was ruled to be good, because the thing was executed, and therefore he had no Deed to shew for it: any Deed: for (indeed) he being issue in tail was remitted. An estate executed need not plead a Deed.

Co.lib.236.b.4. 17 Where is a diversity between inheritances executed, and inheritances executory, as Lands executed by Livery, &c. cannot by limitation of uses be defeated after years, and so if a Disseisee release to a Disseisor, it cannot be defeated by Covenants of release and made after years, &c. Estate executed and executory diversly.

Litt. §. 620, 621, 622. Co.lib.333,334 18 If Tenant in tail grant the Land to A. for life, and afterwards grants the Reversion to B. in Fee, and afterwards A. dies, and B. enters, and then the tenant in tail dies; In this case, the entry of the issue in tail is taken away, because the Reversion of B. is executed; So it is also where the Tenant in tail grants the Land for years, and afterwards grants away the Reversion to another, for in that case also both the Fee and Freehold interest are discontinued, and the Reversion is executed in the Grantee: Yet it is otherwise, where the tenant for life survives the tenant in tails; for then is not the Reversion executed in the life of the tenant in tail, and there is not the issue in tail put to his Formedon, but may lawfully enter, &c. The like.

Co.l.1.155.b.2 The Rector of *Cheddingtons* Case. 19 There is a diversity between a Covenant or Agreement, which is perfect and certain, albeit it shall take effect in possession upon some future matter precedent; And a Covenant or Agreement imperfect and uncertain, which is to be reduced to certainty by matter ex post facto; For, in the one case the estate is bound presently, but not in the other case not; As 3 Mar. Brook Feoffments, 41 nes 19. If it covenanted between A. and B, that the Bound of A. shall marry the Daughter of B, for which B. gives to A. 100l. and A. covenants with B, that if the marriage take not effect, that A. and his heirs will stand seised of 150 acres in D. to the use of B. and his heirs, until A. his heirs, &c. pay to B. 100l. after B. hath issue under age and dies, the marriage takes not effect; In this case, the estate is executed in the heir of B. and shall have relation to the making of the Indenture, &c. But if the Grant of a Reversion die, nothing can be done to his heir; So it is also where the Devise dies before the Devisor, &c. Pl. Co. Brets and Rigdens case, 345. Vide Shelleys case, where the Indenture bound the land, albeit execution was not taken out till after his death; for the estate was executed by the Indenture and Reversion before execution, which shall have a retrospect to the Indenture; Mich. 11 H. 7. 12. Where the heir shall have execution upon a fine: But if the Feoffor or Feoffee die before entry, feoffment by Livery within view shall not take effect: So also, in the Rector of Cheddingtons Case, Co.l. 1. 155, 156, by the death of Tho. Chetham it is not retained, nor can vest in his executors. An estate executed, uncertain, executory, divisly.

Co.l.3.86.a.1. The Case of Fines. 20 If the Bishop or Baron make a Lease for life, and after grant the Reversion in Fee, and the Lessee for life die in the life of the Bishop or Baron.

the Bishop, or of the Baron, this is a Discontinuance: If it is otherwise, if the Bishop or Baron survive the Bishop or Baron.

hing executed unalterable. 22 H. receives 75 l. in B. R. and assignes it by Deed inrolled to Erwen El. in satisfaction of a like Debt, as Collector of the Fifteens, prohibits it the Barons Exchequer, and Barons of the Exchequer, or any three of them assent to the assignment, &c. and revoke it by writing under their hands, that then the assignment shall be void; after the Defendant brings Error, and the judgment is affirmed, and 5 l. Costs given: after by Writ of Prerogative the Land of the Defendant was extended, and Goods seised to the value of the Debt; And afterwards the Barons revoke the assignment after the death of the Plaintiffe, because the Plaintiffe had satisfied the Debt, and his executors sues a Scire facias for the 75 l. and 5 l. Costs. But it was adjudged, that after execution had by the Queen, which was the effect of the assignment, the Revocation came too late; for he that hath power of Revocation cannot revoke a thing lawfully executed; So a Letter of Attorney cannot be revoked after it is executed, Vide 7 H. 6. 42. and 7 H. 4. 2. The Debtor is out-lawed, the Debtor payes to the King, the Out-lawry is reversed; In this case, the Debtor shall recover against the Debtor: So if the Goods of an out-lawed person be sold, &c. he shall have restitution of the Goods; but upon a Fieri facias, &c. only the value, Vide 3 E. 3. 51. Recompence in value once lawfully executed, shall not be devested; albeit the title of the Defendant be after wards disaffirmed, and adiged. Co. l. 8. 96. b 4. in *Mannings* Case.

remainder executed. 22 If a remainder be once executed, in a Writ of Formedon in the Descender he shall neder speak of that remainder, but the general Writ of Formedon in the Descender shall serve in that case, and he shall count of an immediate Gift; for a Formedon in remainder he cannot have, after the remainder is once executed: But if a Lease for life be made, the remainder in tail to A. the remainder in tail to B. if A. die without issue in the life of the Tenant for life, and B. put to his Formedon in the remainder, in his Formedon he ought to make mention of the remainder to A. albeit it was determined and spent; for, the Demandant in the Formedon in remainder ought to make mention of all the precedent remainders in tail, because in that case the remainder was never executed by way of descent. Co. l. 8. 88 a. 1. in *Buckmeres* Case.

In London suit may be before Judgment. 23 The Mayor of London may alter the course of Justice in a cause hanging before the Sheriffs, viz. to send for the parties, and to stop the suit also, if he find the Plaintiffe already satisfied; but so he cannot do after judgment, and this he may do by a custome there. Co. l. 8. 126. a 3 in the Case of the City of *London*.

Judgment executed irrevocable. 24 There is a diversity betwixt a thing Collateral executory, and executed, for when an erroneous judgment is given, and after the judgment is reversed by Writ of Error, Collateral acts executory are barred thereby, as if a man hath judgment in a Quare impedit, and hath a Writ to the Bishop, and the Bishop refuse, here the Plaintiffe upon this Collateral matter of refusal, may have a *Quare non admisit*; but if the Defendant reverse the judgment in a Writ of Error, and after the Plaintiffe in the *Quare impedit* brings a Quare non admisit, the Defendant may plead no such Record: Vide 36 E. 3. 25. per Willy and Hill. So if A. in execution at the suit of B. upon erroneous judgment, and after escapes, and after the judgment is reversed by Error, the action upon the escape is gone; for he may plead no such Record, because without a Record the action is not maintainable but in that case if the Plaintiffe bring an action of Debt against the Co. l. 8. 142. a. 1 Doctor *Druries* Case.

Sher-

Sheriffe or Gaoler upon the eſcape, and hath judgment and execution, and after the firſt judgment is reverſed; yet this judgment upon that
7 H.6. 42.a. Collateral matter being executed ſhall remaine in force; Notwithſtanding ſuch reverſal of the firſt judgment. The Conuſee of a Statute Staple in Detinue thereof upon Garniſhment, recovers by erroni-
ous judgment againſt the Garniſhee, and hath the Statute delibered
4 H.7.11. unto him, the Garniſhee brings a Writ of Error, and the Conuſee ſues execution upon the Statute and hath it; Here, albeit the Garniſhee reverſe the judgment, yet this execution ſhall not be avoided thereby, becauſe the Statute is already executed: Likewiſe, if a man recover by erronious judgment, and preſent to a Benefice, or enter into the perquiſits of a Villain, and after the judgment is reverſed by Error, yet, becauſe theſe Collateral acts are executed, they ſhall not be afterwards deveſted.

Co.l.11.40.a.3 in *Metcalfes* Caſe. 25 Upon an interloqutory award of a Court, which is not definitive, a Writ of Error lyeth not, ſuch as are theſe, quod computet, that he ſhall take an Aſſiſe, in Waſte to inquire of the Waſts, in treſpaſſe to inquire of damages; In partitione facienda, quod partitio fiat; In admeaſurement: quod admenſuratio fiet, that a man ſhall be outted of aide, and the like: upon which the Defendant ſhall not bring a Writ of Error; but after judgment in theſe caſes he may. Error lieth not till after judgment.

Co.l 10.47.b.3 in *Lampets* Caſe. 26 A. Leſſee for 500 years deviſeth to B. for life, and after his deceaſe the remainder to C. and the heires of his body, this executory deviſe may be releaſed to B. but cannot be granted to a ſtranger, it is otherwiſe of an intereſt executed. An executory deviſe not transferrable.

Fitz.N.B.83.b 27 If the Lord levie aide to marry his Daughter, and do afterward marry her, ſhe ſhall not have an action againſt the executors of the father for that money: it is otherwiſe, if ſhe were not married in his life time; So it is alſo of the ſonne not made Knight, &c. Aide formerring, &c.

F.N.B. 120.f. & 121.c. 28 If a man take a feme, who is indebted to an alien, and the feme dies before that Debt is recovered by action, in that caſe the Baron is not chargeable; It is otherwiſe, if it were recovered, living the feme, &c. Baron not chargeable without recovery.

Pl.Co.52.a.1. *Wimb. & Talb.* Caſe. 29 An heir in tail, that hath a Reverſion, or remainder really executed in him, ſhall not need to plead ſpecially how he is heir; it is otherwiſe where it is to be executed: So if Adminiſtrators bring an action of Treſpaſſe for Goods taken out of their own poſſeſſion, they ſhall not ſhew the Letters of Adminiſtration: Otherwiſe it is for Goods taken in the life of the Inteſtate, for there the poſſeſſion of the Goods were never executed in them, but to be executed: Alſo, if a Leaſe be made for life, the remainder in taile, and he in the remainder is ſeiſed, after the death of the Tenant for life, his iſſue ſhall have a Formedon, and ſhall declare upon the immediate Gift, neither yet ſhall ſhew the Deed; otherwiſe it is if that eſtate were to be executed. An eſtate executed, and executory, &c.

Pl.Co. 51.a.3. *Wimb. & Talb.* Caſe. 9 H.6.23. Pl.Co.56.b.5. *contra.* 30 A man deviſeth lands to one for life, the remainder to the right heires male of the Deviſor, and to the heirs of his body begotten, the Tenant for life dies, and the next heir of the Deviſor being a feme enters, and after has a ſonne; And there it was holden by the beſt opinion, that the ſonne ſhall not out the feme, becauſe the ſonne born after ſhall not take away the land before veſted in the feme, as heir, for default of ſuch perſon then in rerum natura, to take the deviſe. An eſtate veſted ſhall remaine.

Co. Inſt. p. 1. 117.a.3. 31 If lands be given to a Villain and to the heires of his body, and the Lord enters, and after enfranchiſeth the Donee, and then the Donee hath iſſue, yet that iſſue ſhall never have remedie either by Formedon Villain and alien tenant in tail.

medon or entry, to recover the Land, for that it was executed in the Lord before the enfranchiſment of the Donée, and the Statute de Donis giveth remedy to the Iſſues of the Donée that have capacity and power to take and retaine ſuch a gift, &c. So it is alſo, if lands be given to an Alien, and to the heires of his body, upon office found the land is ſeiſed for the King, afterwards the King makes the Alien a Denizen, who hath iſſue and dieth, in this Caſe alſo the King ſhall detaine the lands againſt the Iſſue, &c.

ieri facias, ...ecuted ſhall ...nd.

32 Sale by the Sheriffe upon a fieri facias ſhall ſtand, albeit the judgment afterwards reverſed, and the Plaintiffe in it reſtored to the value. Dier 363. 24.

Co. l 8.76.b.4. *Mathew Manwings* Caſe.

...his original ...judicial ...ll abate, or ...abate.

33 There is a diverſity betwixt writs real original, which are as things executory, & writs real Judicial, which Iſſue from the judgment, being in the nature of a thing executed: And therefore if 2 coperceners bring a real Action, and the one is ſummoned and ſevered, and after dies having iſſue or no Iſſue, in this Caſe the writ ſhall abate: ſo likewiſe, if 2 jointenants bring an Aſſiſe or other original real Action, and the one is ſummoned and ſevered and dies, the writ ſhall abate, albeit the thing in demand ſurvive: But if two coperceners bring a ſcire facias, which is a judicial writ upon a fine levied, &c. and the one copercener is ſummoned and ſevered & then dies without Iſſue, ſuch judicial writ ſhall not abate: And ſo it is alſo of two jointenants. Howbeit if the copercener that dies, hath Iſſue, it ſhall abate, becauſe the right deſcends.

Co. l. 10. 134 in *Read* and *Redmans* Ca.

...nister ...ioned.

34 If lands be given to a man and the heires females of his body, and he maketh a feoffment in fee, and take backe an Eſtate to him and his heires, and dieth, having Iſſue a Daughter, leaving his wife groſſement enſuit with a Son and dieth, the Daugter is remitted, and albeit the Son be afterwards borne, he ſhall not devеſt the remitter; becauſe it was executed.

Co. Inſt. p. 1. 357. a. 2.

...he Feme re...ined after ...ntinu...

35 If the Baron diſcontinue the land of the Feme and go beyond Sea, and the diſcontinuée leaſes the land to the Feme for life, and gives her ſeiſin, and after the Baron returnes and diſagrees to the leaſe and livery of ſeiſin made to the Feme: yet in this Caſe ſhe is remitted to her antient Eſtate, becauſe by the leaſe for life and livery the remitter was executed in the Feme, and the Eſtate for life to the Feme, which wrought, the remitter, is vaniſhed and wholy defeated: And therefore diſagrément of the husband can devеſt the Eſtate gained by the leaſe, which by the remitter was actually devеſted before.

Litt. §. 677. Co. Inſt. p. 1. 356. b. 4.

...plenarty, ...ore indu...

36 A Clerk is not enabled by the Stat. of 25 E. 3. 7. (by the word poſſeſſor) to plead in barre before induction: for by that his poſſeſſion is executed, and then he is poſſeſſor, and not before.

Dier 1. 8. 4 H. 8.

...enants in ...mmon of ...Advowſon.

37 Three Tenants in common of an advowſon make compoſition, that each of them ſhall preſent by term; if each of them hath once preſented by his turn by vertue of the compoſition, in a Qu. Imp. brought after amongſt them, it is not neceſſary to ſhew the compoſition, becauſe it was executed: it is otherwiſe in Caſe it were not executed: And ſuch compoſition cannot be without writing; it is otherwiſe of coperceners, for ſuch compoſition may be by parol amongſt them, becauſe they are pluries and as one heire, and are compellable to make partition.

Dier 19. a. 104 28 H. 8.

...by *que uſe* ...tender in ...

38 Ceſtuy que uſe after the Statute of 1 R. 3. 1. the 1 of May, makes a leaſe to one for 20 yeares to begin at Mich-ſommer next, the feoffées the ſecond of May at the Requeſt of Ceſtuy que uſe make a leaſe of the ſame Land to the ſame Leſſee for 34 yeares to begin alſo at Mich-ſommer: In this Caſe, the acceptance of the laſt leaſe is not a ſurrender of the firſt, but rather a confirmation of the 20 yeares

Dier 57. b. 2. 35 H. 8

and a new Leaſe for the 14 yeares; for albeit the Leſſee had ſuch an Intereſt, which he might grant or ſurrender, yet in regard he had not poſſeſſion, his Eſtate was onely in ſuing in and executing, and not already begun and executed, ſuch acceptance could not be a ſurrender in Law, and the rather, for that the Leſſees had a lawfull and ordinary authority in the Land to make a leaſe in ſuch Caſe.

Dier 67. b. 20. 3 E. 6. 39 For the debt of a Common perſon upon a Statute after the Inquiſition and before the Liberate, the ſame Land may be extended for the Kings debt; but it ſeemes to be otherwiſe after the Liberate to the Common perſon, for then it is reſted in him in nature of a free-hold; Tamen quære. Statute. Staple.

Dier 81. b. 7. 7 E. 6. 40 In London upon the attachment of a Debt in a third perſons hand, albeit the Plaintiffe have judgement againſt the third perſon, yet before execution ſerved, the Plaintiffe may reſort to have judgement and Execution againſt the Defendant; being his principal Debtor: It is otherwiſe, if the judgement againſt the third perſon had been executed. Attachment of a debt in London.

Dier 98. b. 57. 1 Mar. 41 A Fieri facias (returnable Quind. Paſc.) was directed to the Sheriffe of Middleſex who returnes, quòd cepit bona & catalla to the value of part of the debt, & quòd remanent in cuſtodia ſua pro defectu emptorum, & quòd ante return. hujus brevis, breve de non moleſtando fuit direct. quòd de ulteriore executione ſuperſedeat, which writ he alſo returnes annexed to the fieri facias; Now this writ de non moleſtando was awarded in Banco by reaſon of a writ of Error there brought by the Defendant, but the Record was not yet removed, becauſe the returne of the writ of Error was Craſt. Aſcenc. and not before: In this Caſe, the Queſtion was whether or no the writ de venditioni exponend, ſhould be awarded, becauſe the writ of execution was not ſerved, nor the propertie of the goods altered, notwithſtanding the ſeiſure, yet at laſt the writ de venditioni exponend. was awarded by Sanders and Browne, notwithſtanding the ſuperſedeas, becauſe (as it ſeemes) the writ of Error, upon which the ſuperſedeas was founded, was but erroneous, being not then returnable. Execution. Error.

Dier 205. pl. 3. 3, 4 El. 42 The Conuſee of a Statute hath a Rent-charge, and before extent purchaſeth parcel of the Land; In this Caſe, the Rent is gone, and ſhall not be in Extention: But it ſeemes to be otherwiſe if the purchaſe hath been after the extent of the Rent executed. Extent.

Dier 220. 50. 5 El. 43 A fine was acknowledged by Baron and Feme of the Land of the Feme in the Vacation after Hillary Term by ded. poteſt. the Feme being then but 19 yeares of age; the writ of Covenant bare teſte in Jan. returnable Craſt. Pur. and the ded. poteſt. bare teſte three dayes after the original, and the Quens fiver was entred upon Hillary Term four dayes before the death of the Feme, viz. die Veneris in Septinaria Paſch. But yet the fine was not ingroſſed until Wenſday after; whereupon the heire of the Feme in Eaſter Term prayes, that the fine ſhould not be delivered to the party, nor recorded, yet it ſeems, notwithſtanding the undue practiſes of the Baron, becauſe after the entry of the Quens fiver before the death of the Feme, and the ingroſſing of the fine before Eaſter Term, the fine was perfectly executed. Fine.

104 Poſſibility of things.

ibility if dge.

1 If Lands be given to a man and a woman un-married, and to the heires of their two bodies, for the apparent poſſibility of inter-marying they have an Eſtate taile in them preſently; So it it alſo where lands are given to the Husband of A. and the Wife of B. and to the heirs of their bodies: for they have alſo a preſent Eſtate taile in them, in reſpect of the poſſibility: Alſo if a Feme ſole do enfeoffe a maried man cauſa matrimonii prolocuti, it is good for the poſſibility, &c. Co. Inſt. p. 1. 20. b. 4.

ibility of wer.

2 If there be Baron and Feme, and the Feme is above the age of 9 yeares, and under the age of 12 (that being the age of conſenting to marriage) and the Baron (of what age ſo ever) die before the Feme attaine the age of 12; yet ſhall ſhe be endowed, in reſpect of the poſſibility of conſenting at that age, which (indeed) is the conſummation of the marriage: So if a man take a Wife of the age of 7 yeares, and after alien the Land, and after the alienation the wife attaineth to the age of 9 yeares, and after the husband dieth: yet here alſo the wife ſhall be endowed, for the poſſibility of being dowable, if ſhe attained the age of 9 yeares before the death of the husband: for by his death the poſſibility of Dower is conſummate, &c. Co.ib.33.a.3.

enants in ſpeciall taile oo years old.

3 If a man gives land to a man and his Wife and to the heires of their two bodies, and they live till each of them is an hundred yeares old and have no Iſſue; yet do they continue ſtill Tenants in taile: for that the Law in that Caſe will not ſee in them an impoſſibility of having Children, although they be never ſo old: It is otherwiſe, where Land is given to a man and a woman in ſpecial taile, and woman dies without Iſſue, for there the Law ſeeth an apparent impoſſibility that the man ſhould have inheritable Iſſue by another woman, &c. Co.ib.18.a.2.

Dower ex aſſenſu by any is a conſtant eire appa- nt not good.

4 The youngeſt ſon and heire apparent cannot endow his wife ex aſſenſu patris, of lands whereof the Father is ſeiſed in fee of the nature of Borough Engliſh, in reſpect of the poſſibility that the Father may have another Son; for then the husband is not heire apparent: For the ſame reaſon it is that Dower ex aſſenſu fratris or conſanguinei is not good: becauſe albeit he is heire apparent at that time, yet for the common poſſibility that the Brother or Couſin may have Iſſue, and every Iſſue that he ſhall ſo have will exclude the husband from being heire apparent, he is no ſuch heire apparent as the Law intendeth, for the Law intendeth a conſtant and perpetual apparence, &c. Co.ib.35.b.2.

mant by the rteſie ugh the ate be ar- ected.

5 If a man takes a wife ſeiſed of lands or tenements in fee and hath Iſſue, and afterwards the wife is attainted of felony, ſo as the Iſſue cannot inherit to her, yet he ſhall be Tenant by the courteſie, in reſpect of the Iſſue which he has before the felony, and which by poſſibility might then have inherited: But if the wife had been attainted of felony before Iſſue had, albeit he hath Iſſue afterwards, he ſhall not be Tenant by the courteſie: Becauſe then there was no poſſibility at all, that ſuch Iſſue ſhould inherit after her. Co.ib.40.a.2.

ant in er, though e be a ing im- ility of ing Iſſue.

6 Dower is given to the Feme for the poſſibility, that the Iſſue, which ſhe may have by the Baron, may inherit his land, albeit ſhe be barren and have no Iſſue by the Baron; And although the Feme be 100 yeares old, and the husband at his death onely 4 or 7 years old, yet ſhall the Feme be endowed: For, the Law can not judge that impoſſible, Co.ib.40.a.3.

which may fall within the bounds of nature to be poſſible, it being certain that women in ancient time have had Children at ſuch an age, as no women doth now attaine unto; and my Lord Coke ſaith, that he knew a woman above 60 yeares old to have a Childe, ideò non definitur in Jure, &c.

Co. ib. 47. a. 1

7 A Rent cannot be reſerved by a Common perſon upon an Eſtate for life of any incorporal inheritance, as Advowſons, Commons, Offices, Corody, Multure of a mill, Tythes, Faires, Markets, Liberties, Priviledges, Franchiſes, and the like; becauſe the Leſſor cannot have reſort or recourſe to diſtraine for the Rent arreare, and if it be upon a leaſe for yeares, yet he ſhall not diſtraine for it, but have onely an Action of debt for it upon the contract: Howbeit a reverſion or a remainder of Lands or Tenements may be granted reſerving a Rent, for the apparant poſſibility that it may come in poſſeſſion, &c. Rent reſerved upon a corporation or rendring good.

Co. ib. 58. b. 3.

8 Albeit a Copi-hold Tenement, that eſcheates, is kept for many yeares together in the Lords hands, yet it ſtill retaines the quality of being demiſſible, in reſpect of the poſſibility that the Lord may again admit ſome man unto it, &c. Copi-hold if the Lords remaines ſtill demiſſible.

Co. Inſt. p. 1. 80. a. 11

9 If the Anceſtor marieth his heire apparent within the age of conſent, and dyeth, the Infant being ſtill within the age of conſent, the Lord may take the Infant (if he will) into his poſſeſſion, and if the Infant be detained from him, he ſhall recover him in a writ of ravithment of ward, and thereupon have the Infant delivered unto him; And this is in reſpect of the poſſibility that the Infant may diſagree to the marriage; Howbeit if at the yeares of conſent he agree to the marriage: neither the King nor the Lord ſhall have the marriage, for then it is a marriage ab initio, and there need no other marriage. An infant married before yeares of conſent.

Co. ib. 244. a. 2

10 If the Husband hath an apparant poſſibility of procreation, as under eight yeares, or under the age of procreation, the Iſſue, which his Wife hath, is a Baſtard, albeit he was then within the four ſeas, that is, within the juriſdiction of the King of England; but when the parties are both of full lawful age: if the Husband be within the four ſeas, as afore-ſaid, when the wife hath Iſſue, albeit he never came neer her, yet is the Child Legittimate, for the poſſibility that they might meete together: For, (in that Caſe) Filiatio non poteſt probari, &c. So it is alſo if the Iſſue be borne within a moneth or a day after marriage, for (in ſuch Caſe) the Law will not judge of any impoſſibility, &c. Iſſue, the husband *infra Maria.*

Co. ib. 316. a. 4 & Co. l. 10. 44. a. 2. *Jennings* Caſe.

11 A. ſeiſed of Land in Fee grants it in tail to B. and afterwards grants the Reverſion to C. in Fee by Fine, in this Caſe, the Tenant in tail is not compellable to attorne, in reſpect of the poſſibility that this Eſtate (being an Eſtate of Inheritance) may continue for ever, &c. Tenant in tail not compellable to attorn.

Litt. §. 707. Co. ib. 371. 6.

12 If a man hath Iſſue two Sonnes and is diſſeiſed, and the eldeſt Son releaſe to the Diſſeiſor by deed with Warranty and die without Iſſue, and afterwards the Father dies, this is a lineal Warranty to the younger Son, for the poſſibility that the younger Son, might have conveyed his tittle to the Land through the eldeſt Son, in Caſe the eldeſt Son had ſurvived the Father: Otherwiſe it is, where the yonger Son deceaſeth and dies without Iſſue: for the eldeſt Sonne can by no poſſibility convey his title to the Land from the Father through the younger Son, &c. Lineal & collateral warranty.

Litt. §. 708 Co. ib. 372. a.

13 If Tenant in tatle hath iſſue three Sonnes, and diſcontinue the tatle in Fee, and the ſecond Son releaſeth by his deed with Warranty to the Diſcontinuee, and after the Tenant in tatle dies, and the ſecond Son Lineal & collateral warranty of Tenant in tail

So on dies without Iſſue; here the eldeſt Sonne is barred to have any recovery by writ of Formedon; becauſe the Warranty of the ſecond Brother is collateral to him for the impoſſibility that he may convey any Eſtate to him through the ſecond Brother: but if the eldeſt Sonne die without Iſſue, then may the youngeſt Son have a Formedon, in reſpect of the poſſibility that the youngeſt Son might have conveyed the deſcent of the land to him through the ſecond Brother, &c.

heire ſhall ve writ- ings.

14 If a man make a Feoffment with warranty and die, the heire of the Feoffor ſhall have all the writings, which the Feoffor himſelfe might detaine, albeit the heire hath nothing by deſcent, for the poſſibility of the deſcent afterwards. Co. l. 11. b. 4. in the Lo. *Buckhurſts* Caſe.

ur of a re- nder to the es of I. S. od.

15. If a Leaſe be made for life the remainder to the right heires of I. S. (the ſame I. S. being then in rerum natura) it is good, for the common poſſibility, that I. S. may die during the life of the Tenant for life. Co. Inſt. p. 1. 378. a. 3. Co. l. 1. 51. b. 1. Sir *Hugh Cholmeleys* Caſe.

he Law con- ceiveth a ild in *ventre* mere.

16 Albeit Filius in utero matris is part viſcerum matris (vide 3. Aſſ. Pl. 2. 22 Aſſ. Pl. 94. 22 E. 3. Tit. Corone 180. Stanford fol. 21.) yet the Law in many Caſes hath conſideration of him in reſpect of the apparent expectation and poſſibility of his birth for which ſee the opinion of Sanders and Browne in Stowells Caſe, for the avoyding of a fine; vide temps E. 1. Tit. Guard 153. & 31 E. 1. Tit. briefe. 873. for the Guard of ſuch an infant; vide 38 E. 3. 7. & 41 E. 3. & 11 E. 3. Tit. voucher, that he ſhall be vouched in ventre ſa mere 3 El. Dier 186. An adulterer counſels the Feme to murder the Infant, when it ſhould be borne, who doth it accordingly, in this Caſe the adulterer is acceſſory, yet at the time of the counſel given the Infant was in ventre ſa mere, &c. Ce. l. 7. 8. b. 4. the Earle of *Bedfords* Ca. Pl. Co. fol.

uſment of *ſky que uſe* ted.

17 If Ceſtuy que uſe after the Stat. of 1 R. 3. and before the Statute of 27 H. 8. had diſſeiſed the Diſſeiſor of his feoffées; here the uſe is ſuſpended, and depends in poſſibility to be revived by the entry of the feoffées, and yet if he make feoffment in Fée, that is good and ſhall bind, in reſpect that the Law hath conſideration of that poſſibility of the uſe. Co. l. 10. 49. in *Lampets* Caſe.

poſſibility ay have a ing and be feited.

18 H. poſſeſſed of an houſe for 31 yeares deviſeth the profits thereof to I. durante viduitate, and after deviſeth the term to R. and dies, I. by the aſſent of the Executor enters and purchaſeth the houſe in Fée of L. who covenants with I. that the houſe ſhall be free from all former bargaines, &c. And in an Action of Debt upon an Obligation for the breach of covenants, the defendant pleads covenants performed, the Plaintiffe aſſignes for breach the deviſe to I. and afterwards to R. and that after I. entring into that covenant I. had maried O. upon whom R. entred, and thereupon the Plaintiffe demurres: And the great Queſtion in the Caſe was, whether (R. at the time of the making of the covenant having onely a poſſibility) the covenant did extend unto it, or no: And it was reſolved, that the covenant did extend to that poſſibility, and that the poſſibility had being for that purpoſe, and might be forfeited. Co. l. 10. 52. a. 3. in *Lampets* Caſe. *viz.* Tr. 28 El. Rot. 1674. *Marrington & Riddyards* Caſe.

19 Vide infra M. 105. in all.

ds may be iled gh given rions un- ed.

20 If tenements be given to a man and to a woman, which is not his wife; and to the heires male of their two bodies, they have an Eſtate taile, albeit they be not maried at that time, and ſo it is if lands be given to a man which hath a Wife, and to a woman which hath a husband, and to the heirs of their two bodies, they have preſently an Eſtate taile, for the poſſibility that they may marry, &c. Co. Inſt. p. 1. 25. b. 4.

re-ſay.

21 Such things as one hath by credible heare-ſay (by the example of Litt. §. 720) are not to be neglected, but are worthy of obſervation, for the apparent poſſibility, that they may be true. Co. ib. 377. b. 4

105 And therefore nothing to be void, which by poſſibility may be good.

1 Vide ſupra R. 104. c. 1.

Co. Inſt. p. 1. 25. b. 4. Co. l. 50. b. in *Lampets* Caſe.

2 If Lands be given to two husbands and their wives, and to the heires of their bodies begotten, this is not a void Grant for the uncertainty, but they ſhall take a joynt eſtate for life, and ſeverall inheritances, viz. the one husband and his wife the one moity, and the other husband and wife the other moity; So if lands be given to a man and two women, and the heires of their bodies begotten, they have a joynt eſtate for life, and every of them ſeverall inheritance; becauſe they cannot have one iſſue of their bodies, neither ſhall there be by any conſtruction a poſſibility upon a poſſibility, viz. that he ſhall marry the one firſt and then the other; So it is alſo when land is given to two men and one woman, and to the heires of their bodies begotten, &c. Lands limited to more than two good.

Co. ib. 45. b. 3.

3 Regularly in every Leaſe for yeares the term muſt have a certaine beginning, and a certaine end; for ſo Bracton ſaith, Terminus Annorum certus eſſe debet & determinatus; And Littleton alſo hath theſe words, Pur terme de certaine ans; Nevertheleſſe, although before the time it ſhould take effect in poſſeſſion or intereſt it do depend upon an uncertainty, viz. upon a poſſibile contingent before it begin in poſſeſſion or intereſt, or upon a limitation or condition ſubſequent; yet is it not void for that uncertainty; as if A. ſeiſed of lands in fee grant to B. that when B. payes to A. xx ſhillings, that from thenceforth he ſhall have and occupy the land for 21 yeares, and after B. payes the twenty ſhillings, this is a good Leaſe for 21 yeares from thence-forth, notwithſtanding that uncertainty: becauſe it was at firſt poſſible the twenty ſhillings ſhould be paid, and that being paid, the Leaſe had from thence-forth a certaine beginning, and therefore was not void but good ab initio, &c. So if A. leaſeth his land to B. for ſo many yeares as B. hath in the Mannor of Dale, and B. hath then a term in the Mannor of Dale for 10 yeares, this is a good Leaſe by A. to B. of the land of A. for 10 yeares; for albeit there appear no certainty of yeares in the Leaſe, yet becauſe by reference to a certainty it may be made certaine it ſufficeth. If the Parſon of D. make a Leaſe of his Glebe for ſo many yeares as he ſhall be Parſon there, this cannot be made certaine by any meanes, for nothing is more uncertaine than the time of death, Terminus vitæ eſt incertus, & licet nihil certius ſit morte, nihil tamen incertus eſt hora mortis: but if he make a Leaſe for three yeares, and ſo from three yeares to three yeares, ſo long as he ſhall be Parſon, this is a good leaſe for 6 years; for it is poſſible he may ſo long continue Parſon there, and then it is good for ſo long, viz. firſt for three yeares, and then for three yeares more; but for the reſidue it is uncertaine; If a man maketh a Leaſe to I. S. for ſo many yeares as I. N. ſhall name, this is not void for the uncertainty; for when I. N. hath named the yeares, then is it a good Leaſe for ſo many yeares; A man maketh a Leaſe for 21 yeares, if I. S. ſhall ſo long live; Here, albeit the end of his Leaſe depends upon an uncertainty, viz. upon the time of the death of I. S. which is uncertaine, yet becauſe it is poſſible at laſt to know the certaine time of his death, and (by conſequent) the determination of the Leaſe thereupon, the Leaſe is good ab initio; Notwithſtanding that uncertainty, &c. Vide l. 6. fol. 34, 35. in the Biſhop of Bath and Wels Caſe. A Leaſe for yeares good, though uncertain when it ſhall begin.

to one
e of va-
good.

4 In the time of vacation a Grant made to a Covent is void, because the body Politique, which is capable, is not compleat, but wanteth an head; yet if during the vacation, a Lease for life, or a Gift in tail be made, the remainder to the Abbot and his Successors, this remainder is good, because it is possible there may be an Abbot before the particular estate be determined: There is the like Law of a Mayor and Communalty, &c. Litt. §. 443. Co. Inst. p. 1. 264 a. 1.

ment
hough
aine.

5 If A. grant the Reversion of black acre, or white acre, and the Lessee attorn to the Grant; Here, nothing passeth at the time of the Attornment, and that also is onely good in execution, and by the subsequent election of the Grantee; yet is not this a void Grant, nor the Attornment fruitlesse, because upon the Grantees election they may both be made good, &c. Co. lib. 310. b. a

ainder
vest in a
n uncer-

6 It is regularly true, that every remainder, which commeneeth by Deed, ought to vest in him, to whom it is limited, when livery of seisin is made to him, that hath the particular estate; And yet if the person that is to take the Remainder be not in rerum natura, as if a Lease for life be made, the remainder to the right heires of I. S. (I. S. being then alive) it sufficeth, that the inheritance passeth presently out of the Lessor, but cannot vest in the heir of I. S. For that (living his father) he is not in rerum natura, for non est hæres viventis, nevertheless, the remainder is good for the possibility that I. S. may die during the life of the Lessee: Soft a man make a Lease for life to A. B. and C. and if B. survive C. then the remainder to B. and his heires: here, albeit the remainder is not at the time of the Livery certainly in B. nevertheless the remainder is good for the possibility that C. may die before B. it being but a common possibility, that one may die before another. Litt. §. 721. Co. lib. 378. a. 2, 3, 4.

em.

7 If Lands be devised to I. S. for life, upon condition that I. S. shall by the advise of Learned Counsel, settle the same Lands within convenient time for certaine Uses, which (indeed) are prohibited by the Statute of 23 H. 8. cap. 10. Albeit such Uses are by that Act prohibited, yet if that Condition be not performed, I. S. forfeits his estate because they might have been setled by the advice of Learned Counsel, and by purchasing an Incorporation and a licence to settle Lands thereupon, &c. Co. l. 1. 24. b. 4. in *Porters* Case.

may rest
erson
ain.

8 If I covenant with I. S. that in consideration of fatherly affection, and for the advancement of my blood, I will stand seised to the use of such of my sonnes, or such of my kinsmen as I. S. shall nominate; In this Case upon the nomination the use shall be raised: For the consideration is certaine, and the person by matter ex post facto may be made certaine. Co. ibid. L. 1. 176. b. 4. *Mildmayes* Case.

ssibility
void,
gh not as-
able.

9 A man possest of a term for divers yeares, deviseth the profits thereof to one for life, and after his decease to another for the residue of the yeares, and dies, the first Devisee enters by assent of the executor, and after he in the remainder during the life of the first Devisee assignes it to another, and after the first Devisee dies: Here, albeit during the life of the first Devisee, the second Devisee had no estate, that he could assigne over (for the Devise to the first Devisee was (upon the matter) of all the term if he should so long live;) nevertheless the second Devise is not void for the possibility, that the second Devisee might over-live the first; Notwithstanding that possibility he could not assigne over, &c. Co. ibid. L. 4. 66. b 1. in *Fulwoods* Case.

ducement
a Lease to
inty.

10 Every lease for yeares ought to have a certain commencement, but that is to be understood, when it is to take effect in interest or possession: For, if I grant to you, that if you pay unto me 20 l. at Michaelmas Co. ibid. L. 6. 35. b. 4. The Bishops of *Bathes* Case.

chaelmas next, that then you ſhall have my Mannor of D. for 21 years; here, it is uncertaine, whether, that Leaſe ſhall ever have commencement or no; for (indeed) until the payment of the money it is no Leaſe; yet is it a good Leaſe in reſpect of the poſſibility that the money may be paid, for then it will have a certaine commencement: So alſo the continuance of a Leaſe for yeares ought to be certaine, yet if a man leaſe the Mannor of D. to I. S. for ſo many yeares as I. N. hath in the Mannor of S. and I. N. hath 10 yeares in S. I. S. ſhall have ſo many in D: So if a Leaſe be made to another during the minority of I. D. and he is ten yeares old, that is a good Leaſe for 11 yeares, if I. D. ſo long live; for theſe two laſt Leaſes are by reference reducea-ble to a certainty: In like manner, if a man make a Leaſe from St. Michaelmas for ſo many yeares as I. S. ſhall name, and I. S. names a certaine term (in the life of the leſſor,) this is a good leaſe for the poſſibility of rendring to a certainty, by matter ex poſt facto, viz. by the nomination, &c.

Co. l. 10. 50. b. 2 in *Lampets* ca. 15 H. 7. 10. Pl. Co. 55. 2. *Colv.* and *Biv.* Caſe.

11 If land be given to a married man and a married woman, and the heires of their two bodies begotten, this is a good eſtate taile; for of neceſſity death will come, and it is a common poſſibility, that one may die before another, that then the Marriage may enſue, &c. Poſſibility Marriage.

106 *Id certum eſt, quod certum reddi poteſt.*

Co. Inſt. p. 1. 96. a. 2.

1 If a man hold of his Lord by ſhéering all his Sheep in his Mannor of D, when the Lord keeps ſometimes a greater number, ſometimes a leſſe: Here, the ſervice being referred to the number, is uncertaine, and if ſo, then the tenant not diſtrainable for it (for it is a Maxime, that no diſtreſſe can be taken for a ſervice that is not certaine) but the ſervice being referred to the Mannor, is certaine, and ſo is the tenant diſtrainable for that uncertainty, becauſe by that relation it becomes certaine. Service mar-taine in one reſpect, cer-taine in ano-ther.

Co. l. 8. 95. b. 4. in *Math. Mannings* Caſe, & *Lampets* Caſe. Co. l 10. 47. a. 4

2 If leſſee for yeares devíſeth his leaſe to A. for life, albeit it is uncertaine how many yeares A. ſhall hold it, yet is not the Deviſe void for ſuch uncertainty: becauſe when A. dies it becomes certaine how many yeares A. was to hold it, and then alſo it may be certainly known how many, how many yeares the party, that is to have the ſubſequent intereſt therein, ought alſo to hold it. Term uncer-taine, made certaine.

Co. l. 9. 30. b. 4 The Abbot of *Stata Mercel-lae* Caſe.

3 When a Charter hath onely a general reference to other Charters, which are upon Record, it is as much in law, as if they had béen all particularly recited; becauſe they may be certainly known by the Record. Record ſuch certainty.

Co. l. 47. a. 1. The Earl of *Shrewsburies* Caſe.

4 *Qu.* Eliz. grants to the Earle of Shrewsbury, Seneſch Dominiorum ſive Maneriorum ſuorum de Mansfield Bolſover, & Harfley, and no County is mentioned, where they lie; yet is not the grant for this uncertainty void; becauſe albeit the Queen might have divers Mannors in the ſame or other Counties of the ſame Name, yet becauſe by ſome of the Clauſes of the Patent, or by other circumſtances, it might be underſtood what Stewardſhips ſhe meant to grant, the letters patents were adjudged good, notwithſtanding ſuch uncertainty: If the King by his letters patents grant to another all the Mannors and Advowſons, which were Priors of A. being a Prior Alien, or which were I. S. who was attaint, &c. ſuch Grants are good, albeit the County is not named, becauſe upon inquiry they may be certainly known, as it is adjudged 32 H. 6. 20, 21. So if the King grant to the Abbot and his Succeſſors, that the Monkes during the vacations ſhall have all the Temporalties of the Abbey, this is a good Grant, notwithſtanding Grants mee taine, made certaine.

withſtanding the uncertainty of not naming the County or Counties where they lie, as it was adjudged 39 E. 3. 21. & F.N.B. 33. T. So likewiſe in 23 E. 3. 21. b. The King grants unto the Queen all the poſſeſſions of a Mannor (eſcheated) until Jo. of Gaunt might be able to govern himſelf, and it was adjudged good, &c. For in all ſuch caſes, if it may be diſcovered by any Clauſe of the Patent, by any circumſtance, (as the Tenants Name, in whoſe poſſeſſion it was, or the like,) by the Particular, or otherwiſe, what it is, that the King intended to grant, it ſufficeth: And if ſuch Patentee be impleaded, and the Plaintiff by reaſon of ſuch uncertainty pleads non conceſſit, and demanding Oyer of the Letters Patents demurres thereupon, it ſhall be adjudged againſt the Plaintiffe: For it is matter in fact, what Manners, &c. paſſe, and for proof thereof ſuch Clauſes and circumſtances, as aforeſaid, ſhall be given in evidence, &c.

Hoſpital ſaine, ough not ile.

5 A piece of Ground or Soil, whereupon an Hoſpital, &c. is intended to be built, may in the Letters Patents of Incorporation be called an Hoſpital; albeit there be no building at that time founded thereupon; and that uncertainty ſhall not preiudice ſuch a grant; becauſe of ỹ poſſibility, that it may be built thereupon, & by that meanes may be made certain. Co. l. 11e 32. a. 1 The Caſe of *Sutton's* Hoſpital.

berties paſſe ough uncer-ine.

6 If the King grant lands, which have come to his hands before, and grant over to the Grantée, tales libertates, privilegia, juriſdictiones, &c. as he that was laſt ſeiſed of the Lands had; here, albeit the King knew not the certainty of the Liberties and Priviledges, yet the grant is good, and the grantée may require the Liberties and Priviledges, that the other had before; becauſe that uncertainty may be reduced to certainty by inquiry, or other circumſtance. Vide the Caſe de Strata Mercella, Co. l. 9. 24. & 18 El. Dier. 351. Co. l. 10. 65. a. 3 *Whiſtelers* Caſe.

bſdie u-ſaine, made ſaine by ſtance.

7 In Fogaſſes Caſe, albeit the quantity of the Moas was not known, when the Agreement was made with the Collegor, and ſo (by conſequent neither the ſubſtance, what money ſhould be paid for it; yet becauſe the Subſtance might afterwards be known by circumſtance (viz. by weighing, whereupon the King might be entitled to an action for it) the agreement was adjudged good, and the Statute perfourmed. If one demiſe all his Acres in D. to I. S. for yeares, rendring for every acre 12 d. the Leaſe is good, becauſe the certainty of the Rent may be known by a Survey of the Acres, whereby the Leſſor may be entitled to an action of Debt for the Rent, if it be arrear. If one give two acres to another, Habendum the one for life, and the other in Fée; it is uncertaine which of them he hath for life, and which in Fée; but if afterwards the Grantée make feoffment of one of them, he ſhall be ſaid to have Fée in that ab initio. So if one let black-acre, and white-acre to another for life, the remainder of one of them in Fée; here, it is uncertaine, in which of them he hath fée: but if afterwards he licences the Tenant for life to fell Trees in white-acre, it ſhall be adjudged, that he had the remainder of that Acre ab initio. In Wheelers Caſe, 14 H. 8. The Grant of a term upon condition, that the Grantée ſhall obtaine the favour of the Leſſor, and ſhall pay ſo much as I. S. ſhall arbitrate, was good, when the condition was fulfilled: and the ſecond Grant was adjudged void: And there it is holden fol. 21. that if one make a Leaſe for ſo many yeares as I. S. ſhall name, here this is uncertaine at the beginning; but if afterwards I. S. name 20 years, it ſhall be good for 20 years from the beginning. So alſo in 17 E. 4. in treſpaſſe for graine taken away, there the plaintiff and defendant had bargained, that ỹ defendant ſhould goe to the place where it grew, & ſée it, & if he liked it upon view, he ſhould take it, paying the plaintiff 40 d. for every acre: this was there holden a good contract not- Pl. 6. a. 4. & 12 3. & 17. a. 3. H. 14. H. 8. 17. Br. Condition 67. P. 17 E. 4. 1.

the uncertainty of the quantity of the Graine, and of the ſummes he ſhould pay for it, becauſe upon the Circumſtance of meaſuring it, the certainty might appear: And ſo there, albeit this were a Conditionall agreement and uncertaine, yet it was holy good Juſtification, if he had preſently paid for it, when he carried it away. In 9 H. 6. the King grants to the Dutcheſſe of York, quondam Inſulam, &c. cum omnibus exitibus amerciamentis & proficuis omnium gentium reſiden. &c. de & infra Inſulam prædict. in quibuſcunque curiis noſtris emergentibus, and there this grant is holden good, for albeit the King knew not at firſt what iſſues or amerciaments would be forfeited; yet becauſe when they were forfeited, they might be certainly known, the Grant was adjudged good. So it is holde in 5 E. 4. The King grants to Garter the Office of King of Heraldes, cum feodis, & proficuis de antiquo, &c. here, in this Grant there was no certainty of the Fees and profits belonging to that Office, yet was the Grant adjudged good, becauſe by inquiry they might be reduced to a certainty. Alſo in 30 H. 6. The King grants all ſuch Lands, as came to him by Attainder, &c. This Grant contained no certainty, yet it was held good, becauſe it might be reduced to a certainty: ſo if the King will pardon all Riots; here, nothing is named in certaine, yet is the pardon good. It is holden in 21 H. 6. that, if a Parſon will grant all his tythe Wool of the next yeare, it is a good Grant, yet the quantity of the Wool is uncertaine at the time of the Grant: ſo it is alſo, where one grants to another all the perquiſites of his Court. If a man grant two acres (as before) the Habendum, the one for life, the other in fee, in this caſe, if the Tenant loſe both theſe acres by default, he may have a *Quod ei deforceat* for the one, and a Writ of Right for the other, and by that meanes the certainty of the Grant is determined. If one grant a Rent-charge, the Grantee may abate, or have a Writ of Annuity, and whether of theſe he will have is maintainable; and this Grant which was in that reſpect uncertaine at firſt, is by that meanes reduced to a certainty, and good. So if one grant to another 20 s. or a Robe; here, it is uncertaine which he ſhall have, yet it being reducible to a certainty, by the Will of the Grantee, the Grant is good. If I have two Horſes in my Stable, viz. a black and a white, and I give unto I. S. one of theſe Horſes, this is uncertaine; yet it is a good Grant; becauſe by the Election of I. S. it may be made certaine.

T. 9 H. 6. 27. Fitzh. *Grants* 7: Br. *Patents* 4.

H 5. E. 4. fo. *ultimo*, and Br. Patents 60.

M. 30. H. 6. *per Choke.*

P. 21 H. 6. 43. Fitz. Grants. 40. Br. Grants 123. and Contract 13. *Perck.* 17. c.

Lit. cap. Rents fo. 40. & Fitz. N.B. 152. a.

M. 9. E. 4. 36. in Debt, and Abr. by Fitz. Det. 89. Br. 12. *Perck.* 17.

Dier 91. a. 11. 1 Mar.

§ If I give unto you ſo many of my Horſes, as may well be ſpared, this is void for the uncertainty; But if I give you one of my Horſes, albeit this is alſo uncertaine; yet becauſe you may make it certaine by your Election, the Gift is good: So if I promiſe to give for your Lame ſo much as it is reaſonably worth, this is void for the uncertainty; But if the judgment thereof be referred to a third perſon, who doth adjudge it; by that meanes it is made good, &c.

Uncertaine certaine by gaines.

107 *Res non per ſe invicem, ſed per pecuniam eſtimantur, & non pecunia per Res.*

Diverſity of a Condition.

1 There is a diverſity, when the Condition is for the payment of money, and when for the delivery of a Horſe, Robe, Ring, or the like: for where it is for payment of money, there if the Feoffee or Obligee accept an Horſe, &c. in ſatisfaction, this is good: but if the Condition be for the delivery of a Horſe, Robe, &c. or, &c. There, albeit the Obligee or Feoffee accept money, or any other thing for the Horſe, &c. it is no performance of the Condition. Co. Inſt. p. 1, 221. b. a.

Diverſity of Conditions, when to do a Collateral act, and when to pay money.

2 In Peytoes Caſe, in the 9 Report, there is a difference taken, betwixt a Condition in a Deed to a Collateral act, as to be bound by a Statute to make a Feoffment to render a true Account, and the like; For there accord with Execution for money, or other thing, is not ſatisfaction to ſave the Forfeiture of the Condition; for the Contract being made by writing to do ſuch a Collateral act, cannot (in ſuch caſe) be altered without writing, according to Rule 87. And thus it is holden in 12 H. 4. 23. 9 H. 7. 4. 4 H. 8. Dyer 2, &c. But when the Condition in the Deed (by the original Contract of the parties) is to pay money, there, by agreement of the parties any other thing may be given in ſatisfaction of the money: For, as the Philoſopher ſaith, Nummus eſt menſura rerum commutandarum, which agrees with the Rule above; And in this ſence it is true, quòd pecuniæ obediunt omnia. But ſo it is not of other things: And it matters not, whether the money mentioned in the Condition be a Collateral ſumme, or parcel of the Obligation, or not: for if a man be bound by Obligation in 200 Quarters of Wheat, upon Condition to pay 20 l. the Obligor may by agreement betwixt them give unto him a Horſe, Gold-ring, &c. in ſatisfaction of the money, albeit (in that caſe) the money be Collateral to the Obligation: And therefore if a man enfeoff another by Deed upon Condition, that the Feoffee ſhall pay a certaine ſumme of money, &c. the Feoffor may (by agreement betwixt them,) give the Feoffee a Horſe, Gold-ring, or the like, in ſatisfaction, and yet the money (in this caſe) is Collateral, having regard to the land: for if tender be made, and refuſal, he ſhall never be compellable to pay the money; and therefore it is mere Collateral, Quia reprobata pecunia (in hoc caſu) liberat ſolventem; And with this agrees Litt. fol. 79, in the Chapter of Conditions. So alſo if a man be bound by Obligation in 100 Quarters of Wheat upon Condition to pay 50 Quarters, he cannot give money or any other thing in ſatisfaction thereof, becauſe the original Contract was not for money: So as when money is to be paid, any other thing may be paid in ſatisfaction; but ſo it is not of any other things; for then neither money, nor any other thing can be given in liew thereof. Co. l. 9. 79. a. 2. Dier 1. 4 H. 8. & 56. 18. 35. 7 H. 8.

108 It favoureth mutual Recompence.

Fee-ſimple without the word *Heires.*

1 Upon partition between Coparceners of Lands in Fee-ſimple, if the one (for eſwelty of partition) grant a Rent to the other generally, the Grantee ſhall have a Fee-ſimple in the Rent, without the word Heires, becauſe the Grantor hath a Fee-ſimple, in conſideration whereof he granted the Rent, Ipſæ etenim leges cupiunt, ut jure regantur. Co. Inſt. p. 1. 9. b. 4. & 169. b. 4. Lit. §. 252.

Ibid. 13. a. 1. 2 If the heir of the part of the Mother of land, whereunto a Warranty is annexed, is impleaded and vouch, and judgment is given against him, and for him to recover in value; and dieth before Execution, the heir of the part of the Mother shall sue Execution to have in value against the Mouthe; for the effect ought to pursue the Cause, and the recompence shall attend the suit. The heir of the Voucher shall sue execution.

Co. Inst. p. 1. 21. b. 1. 3 If lands be given by these words, (in Frank-marriage) according to the Rules of Law, then do these words create an estate of inheritance in special tail; For the consideration of Marriage is (in that case) more favoured in Law then any other consideration, in regard of the mutual recompence. The word *Frank-marriage* creates inheritance.

Ibid. 47. b. 3. 4 The Lessor for years must be seised of the Land demised at the time of the Lease made, for in every Contract there must be quid pro quo, because contractus est quasi actus contra actum; Also therefore if the Lessor hath nothing in the Land, the Lessee hath not quid pro quo for any thing, for which he should pay the rent: Also in that case he may also plead that the Lessor non dimisit, and give in evidence these matter. The Lessor must be seised.

Ibid. 78. a. 2. 5 If the Father purchase his eldest Sonne, or any of his youngest Sonnes, or others to the making of his Wife a Joynture, assurance of his Daughters, payment of his Debt or the like, and die, his heir within age, the heir shall be in Ward for his body, and the third part of the land, by construction of the Statutes of 32 & 34 of H. 8. but if his eldest Sonne or any of his youngest Sonnes purchase Lands of the Father, which are holden by Knight-service, bona fide for a reasonable value, the heir shall neither be in Ward, nor pay Primer seisin. Leonard Lovey's Case, Co. l. 10. 83. Purchase bona fide avoids Wardship.

Ibid. 89. a. 4. H. woodliefe & Curties. 6 If a Graveman or a Bayliff receive the rents and profits of the Lands, and be robbed without their default or negligence, they shall be allowed them upon their Account; but it is otherwise of a Carrier; for he hath his hire, and thereby undertaketh the safe Delivery of the Goods delivered unto him, and therefore shall answer the value thereof, if he be robbed of them. A Carrier shall answer Goods robbed.

Ibid. 99. b. 4. Pl. 306. b. Shevingtons Case. 33 H. 6. 6. 39 H. 6. 29. 7 The Meine ought to acquit men of Religion, whose land is given in Frankalmoigne, of all Services to the Lord paramount, for it is their duty to make prayers for their Founder, and his heirs, and if contestation of those prayers the Founder, &c. is bound to pay to the Chief Lord, all Rents and Services arising out of that Land. Vide 3. Meine 7. Tenant in Frankalmoigne ought to be acquit.

Ibid. 101. a. 2. 18 H. 6. 2. b. per Newton. 9 H. 3. Voucher 277. 8 If the Lord grant the Services of his Tenant by Homage Ancestrel, the Tenant shall not be compelled in a per quæ servitia to attorn, unless the Courts will grant in Court to warrant the Land unto him; and if the Tenant vouch by force of this Warranty in Law, it is a good Counter Plea, that the Tenant or any one of his Ancestors, recessit de servitio suo, & fecit servitium solum A. B. sine aliqua coactione de sua propria voluntate. Homage Ancestrel, mixtures a Warranty in law

Ibid. 102. a. 1. 9 If at a Sequatur sub suo particulo, both Tenant and Mesne make default, and the Demandant hath judgment against the Tenant, and after brings a Scire facias to have Execution, the Tenant cannot vouch a Warrantia Cartæ, or if he were impleaded by a Stranger, he may vouch again; but if he had judgment to recover in value, he shall never have a Warrantia Cartæ, or vouch again; for by this judgment to recover in value, he hath benefit of the Warranty. No *Warrantia Cartæ*, or voucher after a recovery in value.

Ibid. 102. a. 3. 10 The Lord that hath received Homage of his Tenant, being vouched, is thereby barred to disclaim.

The

d cie for an &c.

11 By the Ancient Law of England, if the Defendant in an appeale of Mayhem had been found guilty: the judgment against the Defendant had been, that he should lose the like member, that the Plaintiffe had lost by his meanes as an hand for hand, an eie for an eie, &c. 40 Ass. 9. Mirror cap. 4. §. 3. Sect. 18, Britton cap. 25. fol. 144, 145. Fleta lib. 1. cap. 38. Ibid. 127. a. 31

e Mise in- not bar- without ompence.

12 In Littletons Case, §. 260. where the eldest Sister hath the intailed Lands, and the youngest the fee-simple Lands, if the youngest daughter alien part of the Land in fee-simple and dieth, so as a full recompence for the Lands entailed descends not to her Issue, her Issue may instant the taking of any profits of the fee-simple lands, and enter into the Land entailed: for the Issue in tail shall never be barred without a full recompence. Ibid. 173. a. 1.

r of the me no sa- faction.

13 Where the Condition is for the payment of 20 l. the Obligor or Feoffor cannot at the time appointed pay a lesser summe in satisfaction of the whole; because it is apparent, that a lesser summe of money cannot be a satisfaction for a greater. Ibid. 212. b. 4 Co. l. 5. 117. Pinnels Case.

2

n Estate in- ally charged thout fine of overy.

14 It is commonly held, that Tenant in tail cannot alien or charge the Land in tailed without fine or recovery: yet if a Disseisor make a gift in tail, and the Donee in consideration of a release by the Disseisee of all his right to the Donee, granteth a Rent-charge to the Disseisee and his heires, proportionable to the value of his right, this shall bind the Issue in tail; albeit the Estate tailed continue: And this is in respect of the natural recompence. Ibid. 143. b. 1

Benefice harged with- the Pa- ne

15 If there be Parson, Patron, and Ordinary, and the Parson by the Ordinance and assent of the Ordinary grant an Annuity to another, having quid pro quo in consideration thereof, this shall bind the Successor of the Parson; without consent of the Patron. Ibid. 343. b. 4.

rranty may be an- exed to in- poral

16 Regularly a Warranty is only annexable to free-holds or inheritances corporeal, yet to preserve mutual recompence, it may also be annexed to free-holds and inheritances incorporeal, which lie in grant as advowsons, and to Rents, Commons, Estovers, and the like, which issue out of Lands or Tenements: And not only to such inheritances in esse, but also to Rents, Commons, Estovers, &c. newly created; As a man (some say) may grant a Rent, &c. out of the lands he hath, in tail, or in fee, with Warranty: for albeit there can be no title precedent to the Rent, yet there may be a title precedent to the Land, out of which it issueth, before the grant of the Rent, which Rent may be avoyded by the recovery of the Land, in which Case the grantee may help himselfe by a warrantia cartæ, upon the special matter, and so a Warranty in Law may extend to a Rent, &c. newly created, as in Case of a Rent granted upon exchange, or for equity of partition. Ibid. 360. a. 4

rranty & n bind the

17 King H. 3. gave a manner to Edmond Earle of Corne-wal, and to the heires of his body; having the possibility of Reverter, and died. The earle before the Statute of W. 2. de donis, &c. by deed gave the said Manner to another in fee with Warranty in exchange for another Manner, and after the said Statute (in the 28 of E. 1.) dieth without Issue, leaving assets in fee-simple, which warranty and assets descended upon E. 1. as Cosin and heire of the said Earle, viz. Son & heire of H. 3. brother of Rich. E. of Cornwal father of the E. Edmund: And it was adjudged, that the King as heire to the Earle Edmund was by the Warranty and assets barred of the possibility of Reverter, which he had expectant upon the said gift, albeit the Warranty and assets descended upon the natural body of E. 1. as heire to a subject, and E. 1. claimed Ibid. 370. b. 1 Pl. 134. and 553, 554.

claimed the ſaid Manno⁊ as in his Reverter, in Jure Coronæ, in the capacity of his body Politique, in which right he was ſeiſed before the Gift.

Ibid. 372.b.4 Co. lib. 2.16. *Wiſemans* Ca.

18 If Prince Henry Son of H. 7. had made a Gift in tail, the Remainder to H. 7. in Fee, which Remainder by the death of H. 7. had deſcended to H. 8. ſo as he had the Remainder by deſcent, yet might Tenant in tail barre the Eſtate tail by a common Recovery, notwithſtanding the Statute of 34 H. 8. 20. But if H. 7. in conſideration of money, o⁊ of aſſurance of Land, o⁊ for other conſideration by way of Proviſion, had procured Prince H. by deed inrolled and enrolled, to have made a Gift in tail to one of his Servants and ſubjects for recompence of ſervice o⁊ other conſideration, the Remainder to H. 7. in Fee, and all this appear upon Record; This is a good proviſion within the ſaid Statute, and the Tenant in tail cannot by a common recovery barre the Eſtate tail. An intail maindet the King not be bar

Ibid. 384.b.2

19 In a formedon in deſcender, it is a good plea to ſay, that the Anceſto⁊ of the demandant exchanged the land with the Tenant for other lands taken in exchange, which deſcended to the demandant, whereunto he hath entred and agreed; o⁊ if the demandant hath not ſo entred and agreed then may the Tenant plead the Warranty in law, and other aſſets deſcended; for in ſuch Caſes, there ought to be quid pro quo. Warranty affects a gu plea againſt the Iſſue i tail.

Ibid. 390.2.4

20 Tenant in tail maketh a feoffment in Fee with warranty, and diſſeiſeth the diſcontinuee, and dieth ſeiſed, leaving aſſets to his Iſſue; ſome hold, that in reſpect of this ſuſpended warranty and aſſets, the iſſue in tail ſhall not be remitted: but that the diſcontinuee ſhall recover againſt the Iſſue in tail, and he take advantage of his Warranty, if any he hath: And after in a Formedon brought by the Iſſue, the diſcontinuee ſhall barre him, in reſpect of the Warranty and Aſſets; and ſo (by ſuch mutual recompence) every mans right is ſaved. Remitter ſuſpended by warranty and aſſets.

Ibid. 23.2.

21 If one makes a feoffment in Fee without valuable conſideration to divers particular uſes, ſo much of the uſe as he diſpoſeth not is to him, as his ancient uſe in point of Reverter: It is otherwiſe if he make ſuch a feoffment for money o⁊ other valuable conſideration. Uſe remains in the Feoffo

Co. l. 1. 24. 2.3 *Porters* Caſe.

22 If a feoffment be made to ſuperſtitious and unlawful uſes, the Statute of 23 H. 8. 10. makes the uſes void, but the feoffment remaines good, and the feoffees ſhall ſtand ſeiſed to the uſe of the feoffo⁊ and his heires; but if in that Caſe the Feoffo⁊ ſhall reſerve 1 d. Rent, o⁊ receive from the Feoffees 1 d. conſideration upon the feoffment, the Feoffees ſhall be ſeiſed to the uſe of themſelves and their heires. A conſiderat on make feoffees ſeiſ to their uſe.

Co. lib. 106. 84.

23 In Shelleys Caſe, albeit the Recoveree died before execution, yet the judgment being to recover in value, the Iſſue is thereby barred, becauſe he is thereby to have recompence. Recovery in value.

Cited in the Rector of *Chedingtons* Caſe. Co. l. 1. 154. 2.2

24 The Lord Paget, being ſeiſed of the Manno⁊ of A. B. &c. covenants with I. S. and others that in conſideration of the diſcharge of his funerals, and payment of his debts and legacies out of the profits of his land, and for the advancement of his Sonne and others of his blood, he and his heires would ſtand ſeiſed of the ſaid Manno⁊s to the uſe of the ſaid I. S. &c. for the life of the ſaid Lord Paget, and after his death to the uſe of Ch. P. and others for the term of 24 yeares, and after the expiration o⁊ end of that term, then to the uſe of Sir William Paget his Son in taile with divers remainders over, and after the Lord Paget was attainted of treaſon; In this Caſe it was adjudged, that the term to Ch. P. &c. was void, becauſe there wanted good conſideration, in as much as Ch. P. &c. were ſtrangers to the conſiderations aforeſaid: But if he had made them executo⁊s, ſo that they might have been chargeable towards the payment of his debts, and ſo made profit to the conſide- An uſe muſt have good conſidera

ſideration, then had ſuch conſideration been good, and the Eſtate raiſed to them has alſo been good.

neral ideration ood.

25 An uſe cannot be raiſed by any covenant or Proviſo, as by bargaine and ſale upon a generall conſideration, and therefore if a man by deed indented and inrolled according to the ſtatute, for good conſiderations bargaine and ſell his land to another and his heires, nihil inde operatur, for no uſe ſhall be raiſed upon ſuch generall conſideration, becauſe it appeares not to the Court that the Bargainor has quid per quo; but if a good conſideration can be averred, that ſhall ſuffice to raiſe an uſe, albeit no particular conſideration be mentioned in the deed. Vide plus ibid. C.l. 1.176.a.1. *Mildmays* Caſe.

luable ideration raiſe an

26 Tenant in tail, Remainder in fee, he in Reverſion by deed indented and inrolled, in conſideration that his Lands ſhall continue in his name and bloud, and for divers other good conſiderations, covenants to ſtand ſeiſed to the uſe of himſelfe and the heires males of his body, and for default of ſuch Iſſue to the uſe of Queen El. and her Succeſſors, and after Tenant in tail in poſſeſſion ſuffers a Common Recovery with voucher: In this Caſe, no uſe was raiſed to the Queen by the Indenture, for the words, for other good conſiderations, are in generall to raiſe an uſe, without ſpecial averment that ſome good conſideration was given: Alſo that the bond ſhall continue in his name and bloud is no conſideration to raiſe an uſe to the Queen: for there wants quid per quo, &c. And contractus dicitur quaſi Actus contra Actum. Co.l.2.15.a.3 *Wiſemans* Ca.

eſtate tail ſpeed until r verſal of the ncous re-very.

27 L. and M. Joint-tenants for life, the Remainder to L. in tail, Remainder to M. L. ſuffers a treachery erroneouſly and dies without Iſſue, and N. alſo dies; there, albeit the treachery is erroneous (and by conſequent not void but voidable by writ of error) yet ſo long as it continues in force, N. hath no right in the moity of the Remainder in reſpect of the intended recompence: and alſo if Tenant in tail ſuffer a common treachery erroneouſly, and after diſſeiſe the treachery and die, his Iſſue ſhall not be remitted; for ſo long as the treachery remains in force the diſſeiſee tolle is barred, by reaſon of the recompence by treachery in value. Co.l.3.3.a.3. The Marq. of *Winchesters* ca.

overy in ue a barre the Iſſue.

28 Baron and Feme are Joint-tenants for life, the Remainder to the husband in tail, the husband ſuffers a treachery in bonum, and barres the Remainder, albeit the Feme joyned not: for here was a lawful Tenant to the præcipe, and the husband comming in as heyre coſtes facta poteſtate ſibi the Eſtate, and the recompence goes to the Iſſue in tail. but if the Feme inheritance had been joint with the Baron, it might be doubted whether the Iſſue had been barred then (it ſeemes he had been barred for the moity, in reſpect of the treachery in value of the moity. Vide 55. 90. Co.l.6.a.2. *Cappledikes* Caſe. Co.l.6.52.a.2 Sir *will. Fitzwilliams* Caſe

ribution.

29 If a man be ſeiſed of two Acres, the one of the nature of Borough-English, and binds himſelfe in a Statute or Recognizance, or if Judgment be given againſt him, and he diſcharging Iſſue the two ſiſters, who make partition: In this Caſe if the one be eaſily charged, ſhe ſhall have contribution and recompence againſt the other; ſo as one purchaſer ſhall have contribution againſt the reſt, and alſo againſt the heire, ſo one of theſe two heires ſhall have it againſt the other, becauſe they are in æquali jure. Co.l.3.12.b.4. Sir *William Herberts* Caſe. Co.l.3.21.a.4 *Twines* Caſe. 8.ib. 83. a.4.

ure no l conſide-n within Statute of El. 5.

30 The words in the proviſo of 13 El. 5. (concerning fraudulent conveyances) upon good conſideration, & bona fide, ſhall not be underſtood, of Eſtates or Bloud, but of ſome conſideration of money, or other thing of value: for if one being troubled with ſuits ſuddainly, to ſuch party grand in conſideration of natural affection gives all his goods

gods to his Son or Coſin, in this Caſe, in as much as the Creditors ſhall loſe their Debts, &c. which are things of value, the intention of the Act was, that the conſideration in ſuch Caſe ſhould be valuable; for equity requires, that ſuch a Gift, which defeats others, ſhall be of as high and good conſideration as the things, that are ſo defeated by it.

Co. l. 4. 1. b. 2. *Vernons* Caſe. 31 If a man before the Statute of 27 H. 8. 10. in conſideration of a Marriage after to be had with A. had made an Eſtate of certain lands to her for life, in full ſatisfaction of all the dower, which after marriage might accrue to her in any of his lands, and after they had intermarried, this had not been any barre of her dower at the Common Law, becauſe ſhe had not any title of Dower at the time of the acceptance of the ſatisfaction, but that accrues afterwards. Joincture made before marriage no bar of dower.

Co. lib. 4. 121. a. 4. *Baſtards* Caſe. 32 In every Exchange rightly made this word Excambium imports in it ſelfe (tacitè) a condition and alſo a warranty, the one to give a re-entry; and the other a voucher and recompence, and all in reſpect of the reciprocal conſideration, the one land being given in exchange for the other; but this is a ſpecial warranty; for upon the voucher (by force thereof) he ſhall not recover other land in value, but that onely, which was ſo given by him in exchange, becauſe in as much as the mutual Conſideration is the Clauſe of the Warranty, therefore it ſhall onely extend to the land reciprocally given, and not to any other land. Exchange implyes a warranty.

Co. l. 5. 87. a. 2. *Blumfields* ca. 33 Two are bound in an Obligation jointly and ſeverally, one is ſued and in execution, ſo is the other; the firſt eſcapes, the other brings an Audita querela; here the Audita querela lies not; for the Action againſt the Sheriffe upon the eſcape is not ſatisfaction of the Debt, becauſe he may be worth nothing, and if both had been ſued by one writ, and ſeveral præcipies, the entry ſhall be, that there be one execution, viz. with ſatisfaction; for they ſhall both be in execution: If the Conuſor of a Statute Staple or Marchant eſcape, his lands and goods may be extended; ſo it is alſo if he dies in priſon; for execution of the body is not ſatisfaction: for there is a difference betwixt execution, which is valuable, and which is not; valuable execution (by the Common Law) cannot be had twice, as in eviction of lands executed, it is otherwiſe of unvaluable ſatisfaction: Alſo no new can be, where execution was ſued before, but there may be where execution was quouſque as in the Caſe above. The Obligor dying is no ſatisfaction not the Debt.

Co. l. 5. 94. b. 1. *Barwicks* Ca. 34 E. 6. demiſes for 21 yeares, Queen El. leaſes the reverſion for 21 yeares to B. who makes ſeveral leaſes in futuro, and 23 El. upon conſideration of ſurrender the Queen grants to the ſaid B. for 21 yeares, and 26 El. upon conſideration of the ſurrender of the letters Patents of 23 El. ſhe grants to him for three lives from the day of the making: Here the demiſe for three lives is void, being made upon conſideration of the ſurrender of the letters Patents of 23 El. which were void, they being upon conſideration of the whole Eſtate, which was not perfect, part being leaſed out to others before. Void conſideration makes the leaſe void.

Co. l. 7. 17. a. 1 The Caſe of *Swannes*. 2 R. 3. 15, 16. 35 The Cuſtome in Com. Bucks is, that if Swans breed upon any mans ground there the owner of the ground may take the third Signet in them of the ground where they did ſo breed: and it was adjudged a good Cuſtome and reaſonable, becauſe there is quid pro quo. The Lord Stranges Caſe in 2 R. 3. 15, and 16. cited in the Caſe of Swannes. A ſignet in the neſt.

Co. l. 10. 37. b. 2 in *Mary Portingtons* Caſe. 36 Judgment given againſt Tenant in taile with voucher and recompence in value ſhall bind the Eſtate taile, notwithſtanding the Statute de donis, 13 E. 1. and by ſuch recovery in value the Tenant in taile Taile docked by recovery in value.

taile shall have a formedon of the land so recovered in value, as it was holden 15 E. 3. Briefe 324 vide plus in the Book at large: And there is obserued, that albeit the docking of an Estate taile was never thought of by the Sages of the Law until 12 E. 4. yet long before that time the opinion of the Iudges was that it might be so barred in respect of the recompence of recovery in value.

Infant compellable to attourn.

37 In a per quæ seruicia against an Infant, who hath the Tenancy by descent he shall not have his age but is compellable to attourn; because at first the Lord departs with the Land in consideration that the Tenant shall hold of him, and shall do him services, and pay unto him a yearely Rent: For the Tenant is called in Law Tenant per-availe, because the Law presumes, that he hath benefit and availe above the services that he doth and the Rent that that he payes to the Lord; And therefore it is against Reason, that when the heire hath the Tenancy per-availe by descent, that he shall not pay the yearly Rent, &c. which was reserved upon the creation of the tenancy: And therefore Attornment by an Infant is good, which was the principal Case there resolved, he being compellable to attourn in a per quæ seruicia (as before is said) upon the reason afore-said. Co. l. 9. 85. a. 2

Plea by farmer not guardian.

38 A Guardian shall not be punished for Wast done by a stranger, but the former shall, because (as is supposed) he receiues profit out of the farme, and may therefore have an action of Trespas against the stranger. F. N. B. 60. g.

Grant of Mesne hath sought done.

39 Albeit the Peine have paid the services to the Lord Paramount, yet if the Tenant be afterwards distraines for the services, he shall have a writ of Mesne against the Mesne for it, but whether he shall recover damages, quære; yet it seemes he shall have damages, because the Peine shall have damages against the Lord Paramount, if he will put his cattle into the pound for the Tenant, and sue Replevin: And yet nient distraine in his default, is a good plea in a writ of Mesne. Ibidem 138. b.

Annuity against Parson ceasses.

40 A writ of Annuity is maintainable against the Parson upon his Predecessors grant by assent of Patron and Ordinary, and likewise upon an Ordinance made by the Ordinary without the Patron, if he have quid pro quo; So it is also by the Parson against the Vicar upon the Ordinaries Ordinance, if he have quid pro quo. Ib. 152. g. & 1.

Trespas record no otherwise of Arrament.

41 When a trespas is done an Action conceived for it, a concord Executorie pleaded is no barre thereof; For there being a wrong done and not denied, it must be answered with recompence, and then the Concord Executory is not any recompence de facto, nether is there any Action given thereupon to compel the party to make recompence, and so he is without recompence, and destitute of means to recover any: But upon an Arbitrament where the summe is awarded in recompence to be payd at a day to come, that is a good barre, because he may have an Act of debt is for at the day limited, and so the Trespas is converted into another thing by the Arbitrators, who are Iudges thereof, and so it is answered with Action, which countervails satisfaction in deed. Pl. 6. a. 1. *For gasset* Case.

Recompence value.

42 In a Præcipe the Tenant voucheth, and at the sequatur sub suo periculo, the Tenant and the vouchée make default, whereupon the Demandant hath iudgment against the Tenant; And afterwards the Demandant brings a scire facias against the Tenant to have execution, in this Case the Tenant may have a Warrantia Cartæ; And if in that Case a Stranger had brought a præcipe against the Tenant he might have vouched again, for by the iudgment given against the Tenant the Warranty lost not his force: But in such Case if the Tenant had iudgment to recover in value against the vouchée, he shall ne- Co. Inst. p. 1. 393. a. 2.

ver vouche again by reason of that Warranty, because he hath had recompence by taking advantage of the Warranty.

Dier 2. 5. 6 H. 8.

43. If an Executor redeeme goods pawned by the Testator to the value of the goods, he may retain those goods, and they shall not be assets in his hands; for a man ought to be recompenced for that which he hath lawfully disbursed, As a Disseisor who payes Rent chargable upon the Land shall have it recouped in damages: Likewise if the Executor pay with his owne money the debt of the Testator, he may retaine so many of the goods, as amount to the summe or summes so disbursed by him, and they shall not be assets in his hands. Executor redeemes a pawn.

Dier 35. 28. 29 H. 8.

44. A man recovers in a Writ of entry in the Post against Tenant in taile upon a voucher and recovery in value against the Common vouchee, and before execution sues the Tenant in taile dies, and his Issue enters; In this Case, the recoveror may well enter upon the Issue, for the Issue cannot falsifie this recovery, because of the recovery over in value. P. Fitzherbert & Baldwin, sed Shelley è contrà. Recovery in value.

Dier 90. b. 8. 1 Mar.

45. If I Bargaine and sell all my Trees in such a Close: and no mention is made of a summe of money for the consideration, or if it be not said, for a competent of money; in this Case, nothing passeth, because there is not Quid pro quo, which ought to be in every contract. Quid pro quo.

Dier 272. 31. 20. El.

46. The servant of A. was arrested in London upon Trespass, and two, who knew his Master bailed him, afterwards A. promised them for their friendship to save them harmelesse from the damages and costs, &c. In this Case, if they be afterwards charged, an Action upon the Case lyeth not, because there was no consideration, for the bailing was on their own heads, and was executed before the Assumpsit: But if the Master had requested it before, and assumed after ut supra, it seemes to be otherwise: As in consideration that you have married my Daughter at my request, I will give you, &c. This is a good consideration, because the marriage ensued my request. &c. Assumpsit.

Hob. 6. 4. 18. & 88.

47. Vide Hob. 4. Lane & Malorie in Assumpsit, the consideration was the delivery of the Statutes Staple to the Defendants: Also Hob. 18. Woolastons Case, in Assumpsit, the consideration was a longer day: And 88 Nichols & Raynbred, the consideration was promisse for promisse, which must be at the same time, otherwise they are meere pacta: Likewise 88 Brindley and Partridge, the consideration a former debt promised upon accompt. Assumpsit.

Hob. 118. *Shelton.*

48. Every Rateur modus decimandi by prescription is a discharge of the naturall title. Tithe.

109 *De minimis non curat Lex.*

Co. l. 5. 56. b. 3. *Knights* Case.

1. The Office by commission under the Exchequer seale is enough to entitle the King to a Chattle. Chequer seale.

Co. l. 6. 42. a. 2. S. *Anth. Mildmays* Case.

2. The Law favours Estates taile in possession but gives no regard to Remainders or Reversions expectant upon an Estate in taile, for it is resolved in Caples Case in the 1 Report, that if Tenant in taile suffer a Common Recovery, that shall not onely barre the Estate taile, and the Remainder or Reversion, but also a Rent, which he in Remainder or Reversion hath granted; So likewise was it adjudged in 2 El. between Terling and Trafford in the Kings Bench, that a Rebellion or Remainder expectant upon an Estate taile shall not be liable to the paine in debt upon an obligation made by his Ancestor. Also 14 El. it was resolved by all the Justices of C. Pl. in Copwoods Case, that if there be tenant in taile, the remainder to right heire of I. S. and Rev. or Re upon an e taile not luable.

a no Tenant in taile ſuffer a common recovery, I.S. being then in life, this ſhall barre the remainder, albeit it were in abeyance and conſideration of Law, which the Law uſually favours: but de minimis non curat lex.

ſe for years feeble ate.

3 If Leſſee for yeares pay a Rent ſeck, it is not ſeiſin requiréd in an Aſſiſe, againſt the Tenant of the Frank-tenement, in reſpect of the meaneſſe and imbecillitie of his Eſtate; For at the Common Law he could preiudice nor draw into queſtion the Eſtate of the Frank-tenement, nor before the Statute of Glocester could be receiued, albeit a recovery were had againſt the Tenant of the Frank-tenement by agréement; neither could he faiſſie a recovery before the Statute of 21 H. 8. and all this by reaſon of the Fébleneſſe of his Eſtate. Co.l.6.57. a.4 Brediwans Ca.

minor.

4 In Treſpas the Defendant pleads Villenage in the Plaintiffe and he was found frée and had 2 s. damages given him, In this Caſe the Defendant ſhall not have an attaint for the finding of the Plaintiffe Frée, becauſe the damages are ſo ſmall. F. N. B. 107. f

dition in broken not.

5 There is a condition in Law annexed to the keep-ſhip of a Park, viz. that if he do not well and lawfully keep the Park, it ſhall be lawfull for the Grantor and his heires to enter: But this muſt be underſtood with a diſtinction; For if the keeper doth not attend on the Park one, two, or, &c. dayes this is no forfeiture of his Office, but if in his default any Déere be killed, whereby a damage comes to the Lord, that is a forfeiture; For non-uſer of it ſelfe without ſome ſpecial damages is no forfeiture of private Offices, but non-uſer of publike offices, which concern the adminiſtration of Juſtice or the Common Wealth, is of it ſelfe a cauſe of forfeiture. Litt. §. 378. Co. Inſt. p. 1. 233. a. 4.

overy not ſeiſable by men out-ary other-ſe.

6 If a Recovery be had againſt a man in a præcipe by default, when he is out of the Realme, he ſhall not (as it ſéemes) avoid it by writ of Error, for ſo a man might be infinitely delayed of his Frée-hold and Inheritance, whereof the Law hath ſo great regard: But out-lawry in a perſonal Action ſhall be avoided in that Caſe, quia de minimis non curat Lex, and otherwiſe he ſhould be without remedy: whereas in the other Caſe the Tenant may reſort to his writ of higher nature, or a quod ei deforceat for his remedy. Co. lib. 2 6 a. b. 3

verſion upon Eſtate ile of no va-in Law.

7 If Lands be given to a man in taile, who hath as much Land in Fée-ſimple, and he die leaving Iſſue two Daughters, who make partition, ſo as the Land in Fée-ſimple happens to the youngeſt Daughter: Here, if the youngeſt Daughter Alien the Fée-ſimple Land and die, her heire ſhall enter for a pur part upon the entailed Lands: And ſo it is alſo if the youngeſt Daughter had granted her part to another in taile: For the Reverſion expectant upon an Eſtate taile is of no account in Law, becauſe it may be cut off by tenant in tail. Co. lib. 271. b. 3

recovery ſtrus or de-ning of trary.

8 If a man be ſeiſed of Lands in Fée and hath Iſſue two Daughters and make a Gift in taile to one of them and die ſeiſed of the Reverſion in Fée, which deſcends to both Siſters, and the Donée or her Iſſue is impleaded, ſhe ſhall not pray in aye of the other Coparcener either to recover per rata, or to deraigne the Warranty paramount, for that the Reverſion is not of any eſtéeme in Law, and the other Siſter is a Stranger to the Eſtate Taile, whereof partition neither was nor could be made. Co. Inſt. p. 1. 174. b. 1.

Wine. Licence.

Hob. 214. 9 The Earle of Somerſet had obtained a grant of the licence of wines for yeares, and woke it in the name of Sir John Daccombe, in truſt for him; Now the Queſtion was, whether or no, by the Earles attainder of felony the leaſe was forfeited; And by the opinion of all the Judges it was forfeited, and afterwards it was ſo reſolved alſo in the Exchequer; viz. in Caſes of Chattels real and perſonal, and things in Action of that ſort.

10 In Actions the Law yeeldeth favour, when for the doing of them there is,

1 *Neceſſity.*

Livery in view.

Co. Inſt. p. 1. 48. b. 3. 1 If a man maketh a Charter of feofment, and deliver ſeiſin within the view, the feoffee dares not enter for feare of death, but claimes the ſame, this ſhall veſt the free-hold and inheritance in him; Albeit by the livery no Eſtate paſſed to him neither in deed nor in Law, and this is by reaſon of the neceſſity; So as ſuch a claim ſhall ſerve, as well to veſt a new Eſtate and right in the feoffee, as in the Common Caſes to revest an ancient Eſtate, and right in the diſſeiſee, &c. And ſo note, that (for neceſſities ſake) a livery in Law ſhall be perfected and executed by an entry in Law.

A reverſion veſted by claim only. As alſo an advowſon.

Litt. § 179 Co. ib. 119. a. 3 2 If a man let land to another for life, having the Reverſion, and a Villein purchaſe the Reverſion of the Leſſor; In this Caſe the Lord of the Villain may preſently come to the land and claim it as the Lord of the Villein, and by this claime the Reverſion is forthwith in him, for he cannot enter upon the Tenant for life, and if he ſtay till after his death, then he may perhaps come too late, for the Villain may have granted it to another; So it is alſo where a Villain purchaſeth an Advowſon: for if the Lord claim it at the Church, it ſhall be thereby veſted in him; becauſe if he ſhould ſtay until the incumbent die, and then preſent his Clerk, the Villain might grant it away before, and ſo the Lord ſhould be outed of his preſentment.

Litt. §. 180. Co. ib. b.

Protection not alowable.

Co. ib. 13. a. 1. 3 In a writ of right of Dower brought in the Court of the heire, a protection is allowable, becauſe the proceedings there may be ſpeedy, the Court being kept every three weeks; but in a writ of Dower unde nihil habet, no protection is allowable, becauſe the Demandant hath nothing to live on; So alſo in a Quare Impedit, or aſſiſe of darreine preſentment a protection lyeth not for the eminent danger of the Lapſe, nor yet in a Quare non admiſit, becauſe it is grounded upon the Quare Impedit.

Diſtreſſe in the night.

Co. ib. 142. a. 3 & Co. l. 7. 7. a. in 1 *Milbornes* Caſe, alſo 12 E. 3 diſt. 176. & 11 H. 7. 5. 4 For a Rent or ſervice the Lord cannot diſtrain in the night, but in the day time only, and ſo it is alſo of a Rent-charge; but for damage feſant one may diſtraine in the night, otherwiſe it may be the beaſts will be gone before he can take them: And with this accords 10 E. 3 Gen. See Mackallies Caſe Co. l. 9. 66. a. 2. Vide infra R. 128.

An infant bound in ſome Caſes.

Co. Inſt. p. 1. 172. a. 2 5 As the full age of an Infant to make all his Acts good is 21 yeares, ſo an Infant may bind himſelfe to pay for his neceſſary meate, drink, apparel, neceſſary phyſicke, and ſuch other neceſſaries, and likewiſe for his good teaching and inſtruction, whereby he may profit himſelfe afterwards; but if he bind himſelfe in an Obligation or other writing with a penalty for the payment of any of theſe, that Obligation ſhall not bind him: Alſo other things of neceſſity ſhall bind him, as a preſentation to a benefice, for otherwiſe the laſt would incur againſt him.

6 Re-

6 Regularly it is true, that he who entreth for a Condition broken shall be seised in his first Estate, or of that Estate, which he had at the time of the Estate made upon Condition; yet if Cestuy que use after the Statute of R. 3. and before the Statute of 27 H. 8. had made a feoffment in fee upon condition, and after had entred for the condition broken; In this Case, he had but an use, when the feoffment was made; but now he shall be seised of the whole Estate of the land. And this is for necessity, because by the feoffment in fee of Cestuy que use, the whole Estate and right was devested out of the feoffees, and therefore of necessity the feoffor must gaine the whole Estate by his entry for the condition broken. Co.lib. 202.a.4

7 In some Cases (for necessities sake) a continual claime may be made by him that hath right, and yet cannot enter; As if Tenant for yeares, Tenant by Statute Staple, Marchant, or Elegit be outed, and he in the Reversion disseised, the Lessor or he in the Reversion may enter to the intent to make his claime, and yet his entry, as to take any profits, is not lawful during the term. And in the same manner the Lessor or he in the Reversion in that Case, may enter to avoid a collateral warranty, or the Lessor in that Case may recover in an Assise; and so (as some have holden) may the Lessor enter, to avoid a discent or a warranty. Co.lib.150.b.2

8. If the Disseisee make continual claime, and the Disseisor die seised within the yeare, his heire within age, and by office the King is entitled to the wardship, albeit that entry of the Disseisee be not lawful, yet (for necessities sake) he may make continual claim to avoid a discent: So also where entry is lawful, but for feare the Disseisee dare not enter, in this Case claime as neere to the house and lands as he dare go amounts to an entry and shall vest the possession and seisin of the tenements in him, as wel as if he had entred indeed; So it doth also if (in such Case) it be done only by his servant or Bailiff, in Case the disseisee himselfe be languishant or a Releasee, so that he cannot claime the tenements himselfe. Co.lib.153.b.3. Litt. §.419. Litt. §.434.

9 In an Action of debt by a Gaoler against the prisoner for his fees, the defendant shall not wage his Law; for he cannot refuse the prisoner, and ought not to suffer him to die for default of sustenance, other wise it is for taking a man at large. Co.lib.295.a.4

10 In an Action of debt brought by an Attorney for his fees, the Defendant shall not wage his Law, because he is compellable to be his Attorney: And if a servant be retained according to the Statute of Labourers, in an Action of debt for his salarie, his Master shall not wage his Law, because he was compellable to serve, otherwise it is, if he be not retained according to the Statute. Co. ibidem.

11 If a man be seised of two Acres of land in two several Counties, and maketh a lease of life of both of them reserving two shillings Rent, in this Case, albeit several diverte annuit be made at several times, yet it is but one intire Rent in respect of the necessity of the Case, and he shall distrain in one County for the whole, and make one avowry for the whole. Co.lib.153.b.4

12 B. seised of a Mannor with an Advowson appendant, by indenture bargaines and sels it to A. and covenants to suffer a Common Recovery to the use of A. in fee, rendring to B. 42 l. per annum, and also to levie a fine to A. and that A. shall render by the said fine the said Rent; provided that A. shall grant the Advowson to B. for life. The recovery is had, B. and A. levie the fine to P. who renter the Mannor with the Advowson to A. and the Rent to B. proclamations passe, A. dies before the grant of the Advowson, the Church becomes void in the life of B. Co.l. 2.77.b.1 The Lord *Cromwels* Ca.

E. enters as heir of A, and B. enters for the Condition broken: In this Case it was objected, that the conusance of B. had extinguished the Condition, but one reason amongst the rest against that was this, that the render of the Rent could not have been made to him; And albeit a Fine be of so high a nature, that it will not permit a naked Averrement against the purport and conusance thereof, yet when the Law requires one for necessity or conformity to joyne with another in a Fine, it permits him also to shew the truth of the matter to avoid prejudice and conclusion. Vide ibid. plus upon the same ground.

Co. l. 3. 73. b. 1 *Westbies* Case. 13 If the Sheriff hath in his custodie divers persons in Execution, and die, and afterwards a new Sheriff is made, it behoves the new Sheriff to take notice at his peril of all the Executions, which are against any person, that he finds in the Gaol, and this is for necessity; for there is none to make delivery of them, or to give him notice, who are in Execution, and who not: And it is no mischief to the Sheriff, if he keep them safe, until he hath perfect knowledge of all the Executions; but if he may with impunity suffer suffer such as are in Execution to escape, great inconvenience would ensue thereupon. The Sheriff to take notice at his peril who are in Execution.

Co. l. 5. 40. a. 4. & b. 3. *Dormers* Case. 14 Albeit (regularly) a Writ of Entry in the Post, cannot be of an Advowson, as appears by the Statute of W. 2. cap. 5. 4 Li. 3. 162. & 14 H. 4. 33. Nor of a Common of Pasture, as also appears 4 E. 3. 146. & 27 H. 8. 12. yet for a Common Recovery (being a common assurance, and by consent of parties) to cut off an entaile, the Law (for necessities sake) permits it; for otherwise there could be no assurance of an Advowson, Common in Grosse, &c. to barre remainders or reversions expectant upon an estate tail. A Writ of Entry upon an Advowson, &c.

Co. l. 5. 109. b. 4. *Foxleys* case. 15 If a Felon be arrested for felonie and as he is in conveying to the Gaol, he flyes from them that convey him, and in the pursuit they cannot re-take him without killing him, and so they do kill him: If the whole matter and also the flight be presented before the Coroner, or any other having authority to enquire of Felonies, albeit the party was so killed, yet he shall forfeit all his Goods and Chattels, because they were urged to do it by necessity: And with this agrees 3 E. 3. Coron. 287, 311, & 328. And there it appears that it is not Felony in those that pursue him. So 3 E. 3. Fort. 25, if an true man kill a thief, that would robbe him (if the thief goe not back) the true man shall forfeit nothing for the same reason. No felony to kill one in pursuit.

Co. l. 6. 21. b. *Butler* and *Goodals* Case. 16 Albeit by the Statute of the 21 H. 8. of non-residence the Parson ought to dwell upon his Rectory, viz. in the Parsonage House, and not in any other House, though it be within the Parish; (for the Statute intends not onely serving of the Cure, or for Hospitality, but also for the maintainance of the Houses and habitation of the Parson, not onely for himself, but likewise for his Successors, that they may also maintaine Hospitality there,) yet lawful imprisonment without Covin, or if there be no Parsonage House to live in, are good excuses, of non-residence; and it was held in the Exchequer, Tr. 39 El. that sickneſſe without fraud is also a good excuse, viz. where the patient removes for advice in Phisick bona fide, for better aire, and for the recovery of his health; for these cases are exceptions out of the Statute by construction of Law. Excepting out of the Stat. of Non-residence.

Co. l. 6. 47. a. 1. *Dowdales* case. 17 In Debt against Executors, the Defendant pleads fully administred, the Plaintiff replies, that he had Assets in Exeter, and the Jury finds Assets in Ireland, and it was adjudged for the Plaintiff; For when the place is material, as when it is parcel of the issue, there the Jurors cannot find the point in issue in any other place; for by special pleading the point in issue is restrained to a certaine place; A Place certaine being pleaded of necessity, restraines the Jurors ver-

But

Dig when the place is only named for neceſſity and conformity, and is alſo parcel of the iſſue, there the Jurors may find Aſſets in any other County or place, than where they were alleadged in the Repliſation: And alſo in 10 El. 291. Dyer, in Debt againſt the heir, he pleads riens per diſcent generally; in this caſe the Plaintiff cannot replie in generall manner, for then no triall could be made thereof, but in ſuch caſe for conformity and neceſſity of a triall, he ought to name a certaine place, as he did (in that caſe) viz. in a Parish in Weſt in London, and upon evidence given by the Plaintiff the Jury found Aſſets in Cornewal, and it was adjudged good; for the Law is, that the Plaintiff ſhall have in Execution all the Lands that the heir hath; And therefore (in ſuch caſe) a certaine place is named for neceſſity, yet the Jurors may find all that, which by the Law ſhall be chargeable in ſuch caſe; in what Town or County ſoever it be.

ſio of rent the Feoffor

18 In Bredimans Caſe in the 6 Rep. it was ſaid, that if there be Lord and Tenant, and the Tenant make Feoffment in Fee, reſerving unto the Feoffor and his heires a Rent, Grants he is Tenant as to the Avowry, 8 H. 6. 18. for in ſuch caſe if the Lord diſtrain upon the Feoffee, before ſeiſure of the Arrerages, he ſhall loſe them, as it is agreed in 7 E. 3. and 7 H. 4. &c. And therefore in as much as in ſuch Caſe the Common Law forces the Lord to avow upon the Feoffee, for that reaſon at the Common Law ſuch Seiſin by the Feoffee (neceſſitas cauſa) was good.

Co. l. 6. 58. a. 1. *Bredimans* caſe

Quare Im- againſt King or

19 Regularly, a Quare Impedit brought againſt the Biſhop and Incumbent, without naming the Patron, abates; yet if the King preſents to a Benefice, and his Clerk is admitted, inſtituted, &c. In this caſe a *Quare Impedit* may be brought for neceſſity againſt the Biſhop or Incumbent, for it lies not againſt the King: So it was alſo of the Pope, if he had uſurped, 12 H. 8. 12. 4 H. 7. 15, &c.

Co. l. 7 26. b. 3. *Halls* Caſe.

Vicar ge- ſhall not ſe, but in of neceſ-

20 Albeit, (regularly) the Vicar general cannot certifie excommunication, yet he ſhall certifie it, when the Biſhop is in remotis agendis, viz. beyond Sea in the Kings ſervice, but the Court muſt be acquainted therewith by matter of Record, viz. by Writ out of the Chancery to direct them, and not by the ſurmiſe of the party, and therefore neceſſity (which is always the Law of time, for neceſſitas eſt lex temporis) the Certificate of the Vicar General ſhall be allowed becauſe no other can then do it; for he only ought to certificate, to whom the Court may write to abſolve the party, as the Biſhop, or the Chancellor of the Univerſities.

Co. l. 8. 69. a. 1 *Trollops* Caſe.

e-ſimple ſh out of ing by fficy with- Office, &c.

21 Reverſion in the Queen upon an eſtate taile, ſhe grants it to T. in taile, upon Condition, that if he pay 20 s. at the receit of the Exchequer, he ſhall have the ſaid Reverſion in Fee, the Condition is performed, the tenant in taile levies a Fine, and his iſſue is barred; And in this caſe the principall point was, whether by the Condition performed, the Reverſion paſſed to T. And it was held, that preſently upon payment of the 20 s. by operation of Law the Fee was deveſted out of the Queen, and veſted in T. And this by neceſſity, for if it ſhould not veſt at the time of the Condition performed, it ſhould never veſt; And therefore, if in this Caſe either Office, Petition, Monſtrance de droit, or other thing ſhould be requiſite, that ſhould make the Queens Grant void, and ſhould diſable the Queen to make ſuch a Grant; Alſo with this agrees the Lord Lovels Caſe

Co. l. 9. 46 b. 2. The Lord *Staffords* caſe.

for

in the Commentaries; for there it is ſaid, when the Condition is performed, the Fée-ſimple ſhall be immediately out of the King, without Petition, Monſtrance de droit, or other circumſtance, for if he muſt tarry ſuch circumſtances, then can it not veſt preſently, and (by conſequent) ſhall never veſt; becauſe if the eſtate be not enlarged at the time of the enlargement appointed, then ſhall it never be enlarged; And therefore in ſuch Caſes for neceſſity the Fée-ſimple palleth out of the Queen without any ſuch circumſtances: with this alſo agrées Iſabel Goodcheaps Caſe, (49 E. 3.) who being ſeiſed in Fée of an Houſe in London, holden of the King; deviſeth it to Richard Goodcheap, and the heires of his body, and for want of ſuch iſſue to be ſold by her Executors, and ſhe makes W. D. W. W. and I. de T. her Executors, and dies without heir, Rich. Goodch. dies without iſſue, whereby the Houſe eſcheates to the King, and after one of the Executors dies, W. W. refuſeth, and W. D. ſels the Houſe, and here the queſtion was whether or no the Sale by one Executor was good, but it was agreed by all, that if the Sale were good, it ſhall devеſt the Houſe out of the King, and the cauſe thereof is by neceſſity of Law; for if the Sale did not devеſt the Houſe at the time of ſuch ſale, then could there be no Sale at all, and the Executors, who had but a power, could not have any petition, Monſtrance de droit, or other remedy.

Co. l. 8. 143. a. 2. Doctor *Bravies* Caſe.

22 There is a diverſity betwixt mean acts done in Execution of Juſtice, which are compulſive, and acts, which are voluntary; And therefore if erroneous judgment be given in Debt, and the Sheriff by force of a Fieri facias, ſell the Defendants term, and after the judgment is reverſed by a Writ of Error, yet the term ſhall not be reſtored, but onely the ſumme, &c. But if a Capias utlagatum be awarded, whereby the Sheriff is commanded to take the body, ut bona & catalla, quæ per inquiſitionem invenerit in manus noſtras capias, & de vero valore, &c. And by force of this Writ the Sheriff by inquiſition takes the Goods and Chattels of the out-lawed perſon, and ſels them, and after the Out-lawry is reverſed, in this caſe the party ſhall be reſtored to his Goods and Chattels, becauſe the Sheriff was not commanded, nor compelled by the Kings Writ to ſell them. A diverſity twixt acts compulſive, and voluntary acts.

Co. l. 9. 49. a. 4. The Earl of *Shrewsburies* Caſe.

23 King James grants to the Earl of Shrewsbury the Stewardſhip of the Mannors of M. and B. but in the Patent power of making a Deputy was omitted; nevertheleſſe it was adjudged, that he might make one; for if ſuch an Office deſcend to an Infant, Ideot, or man of non ſane memoriæ; they by neceſſity ought to exerciſe it by Deputy; ſo an Earl for the neceſſity, that the Law intends of his attendance upon the King and the Common-wealth, this Stewardſhip of a baſe Court ſhall be exerciſed by Deputy. An Earl may make a Deputy.

Co. l. 9. 66. a. 1. *Mackallies* ca.

24 An arreſt in the night is lawful, as well at the ſuit of a Subject, as of the King, for the Officer ought to arreſt him, when he can find him, otherwiſe he may perhaps never arreſt him, for *Qui malè agit odit lucem*, and if the Officer do not then do it, the Plaintiff may have an Action upon the Caſe againſt him and recover his loſſe in damages; Therefore by neceſſity an arreſt in the night is lawful. An arreſt in the night is lawful.

Co. ib. 66. b. 2.

25 The Lords day is not Dies juridicus, and therefore judicial acts ought not to be done upon that day; but Miniſterial acts may in ſome Caſes be lawfully executed upon that day (as an arreſt) for otherwiſe perhaps they might never be executed, and Chriſt permits Works of Neceſſity to be done upon that day, bonum eſt benefacere in Sabbato. An arreſt upon the Sabbath.

28 If Attorneys have power by writing to make Leases by Indenture for yeares, &c. They cannot make Indentures in their owne Names, but in the Name of him that gives them warrant: But if a man by his will in writing devise, that his Executors shall sell his Land and die, in that Case the Executors in their owne Names may sell the Land for necessity, because he that gave them authority by his will (which took effect untill after his death) is dead. Arg. per tot. In such Case the Devise is by the Will. Co. l. 9. 77. a. 2 in *Combes* Ca.

27 If a man enter into bond conditioned to pay the lesser summe at a day to come, if he tender it at the day, he may after plead that tender, and shall say, uncore prist. But if a man by bond or Obligation in 100 quarters of Grains to pay 50 quarters; here, if the Obligor tender them at the day, and the Obligee refuse to take it, without saying uncore prist, because the Obligation is semi-positum, yet he cannot be kept any time, and is ever chargeable for the Obligee to keepe. Co. l. 9. 79. a. 4 *Peysters* Case.

28 The Bishops grant of an Office necessary (by construction) exempted out of the generall restraint of the Statute of 1 El. for as Bracton saith, fol. 247 Quod aliis dictum non licet, necessitas facit licitum, & necessitas inducit privilegium quoad Jura privata. And if Bishops might not have power to grant such Offices of Service and necessity for the life of the Grantee; but that their Estates should depend upon uncertainties; as upon Death, Translation, &c. of the Bishop; then persons of best abilities would not serve them in such Offices, or (at least) would not discharge them with alacrity. Co. l. 10. 61. a. 3 The Bishop of *Sarums* Case.

29 Regularly deeds pleaded in Court shall be produced in Court, for it were dangerous to suffer them to be proved by Witnesses or by a Copy, because the razings, interlinings, and other superstitions cannot thereby appeare to the Court; nor upon what Condition, if-mitation, or power of revocation they were made, whereby Truth, Justice, and the true reason of the Law might be subverted: Nevertheless in great and notorious extremities, as by casualty of fire, where all the evidences in the house have been burnt, if that appeare to the Judges, they may in favour of him, that hath sustained such great losse by the fire, suffer him upon the generall Fame to give the deed in evidence to the Jury by witnesses, because affliction should be added to affliction, and if the Jury find it, although it were not given in evidence, this is good enough, as appears in 28 Ass. P. Co. l. 10. 92. b. 3 Doctor *Leyfields* Case

30 If a man by prescription is bound to repaire a Banke or Wall against water (viz. salt or fresh) and by the default the water breakes in, he shall repaire it at his owne charge; and the rest of the parties interessed therein may recover their damages against him in an Action upon the Case: But if (in such Case) he maintaine the Wall or Banke at the usuall height in good repaire, and by a supervenient an un-usual increase of waters the Walls or Bankes are thrown down by the waters over-topping the Bankes; In such Case the Commissioners of Sewers (by the Statute of 23 H. 8. 5.) are to tax all persons, that have there any Lands, Common or Pasture or profit of fishing, or may other, that may suffer any losse or disadvantage thereby, according to the several quantities of their Lands, &c. Co. l. 10. 139. a. 3. *Knightleys* Case.

31 If Joint Fine imposed upon two Capitall Priviledges in a Leet, because they refused to present with certainty: they had pays the Fine, was assessed both; because it was joining in a not severally set; yet in some Cases a Fine or Amerciament shall be imposed upon divers persons Joyntly, sometimes upon a Towne, Co. l. 11. 43. b. 3 *Godfreys* Ca.

A tempest excuseth an entry by certain agreement with the Customs.

Pl. 9. b. Fogassaes Case. & ib. 13. b. 2.

32 Exemption of Abeam and the killing of men are prohibited by the Common Law, yet every man in his owne defence, and as a Constable in the Night in a Night of watch, and the like, may kill others, and there the one is for the saluation of his life in his defence, and the other for the necessity of trial: for likewise by the Common Custome of the Realme Inhabitants are chargeable with the goods of their Guests being left by Inhabitants out of their houses, yet if their houses be broken by the Kings Enemies, and so the goods taken from them, they shall not be chargeable therewith: For in reason such violence cannot be resisted, and therefore it shall infringe the violence of the Custome: As in Fogassaes Case in the Commentaries, where by reason of the tempest part of the Wood was cast into the Sea, and thereby the quantity remaining could by no meanes be discovered before it was tunned and weighed, the ascertaining agreement made with the Customer before the tunning thereof was injunged good, and so the rigor of the tempest did excuse the rigor of the Statute.

Breaking of Prison and Servants lawful by necessity.

Pl. 13. b. 3. in Fogassaes Ca.

1 E. 6. cap. 13.

33 If a Felon breake Prison, it is Felony by the Statute of Westminster 2. cap. 12. and 4 H. 7. fol. 20. Grace Verdict, 19 Edw. 3. Stamford cap. 7. folio 30. The Inmates who were Diseased upon an Alme for fears of a great tempest forsake the house where they were, and dispersed themselves, and it was there held, that they should not be executed for it; but their Pardon afterwards was held good for the necessity of the occasion, whereas otherwise they should have been grievously punished.

Lawfull is become mal-man.

Pl. 18. b. 2. in Fogassaes Ca.

34 In 22. Books of Ass. Pl. 56. where a man was entered into one Tenements, and his great hurt, whereupon a man together with his servants took him, bound him, and beat him with scourges, and in that case holden, that they might justifie for the avoidance of the great hurt that he might do, being of non sana memoria: and yet by the Law of Nature and Law of the Realme prohibits generally the beating of any, but this speciall Case for the prevention of a greater mischief hath an exception, and a speciall privilege.

Necessity excused a default.

Pl. ibid. b. 4.

35 In a præcipe quod reddat the Tenant shall excuse his default by the Statute of Westm. 2. and yet every default is abhorred in Law, because it is a contempt of the Court: but for that he could not without perill of death appeare, the necessity of the accident in such Case shall excuse him.

Proposition Bread, Eares of Corne may be eaten.

1 Kings 21. Math. 12. Pl. ib. 19. a. 1.

36 This Law of God prohibiting the eating of Proposition Bread, was dispensed with (by CHRIST himself) to be lawful for David to eat it in a time of necessity to prevent famine; so also upon the like occasion it is lawful for Christs Apostles to pull the Eares of other mens Corne, and to eat them: And by our Law an Obligation per duresse or force shall be avoided, because it is done by compulsion.

Pursuit upon an escape of a debtor.

Pl. 37. b. 4. Platts Case.

37 If the Sheriffe of Middlesex suffer an involuntary escape of a prisoner, and making fresh suit after him, takes him in Surrey, whereby his suit determines, yet he may justifie the taking of him there; for also if one come to distrain for Rent-service, and the Tenant seeing him coming, then drives his Cattle from off the land, yet there the Law may pursue them without the same, and take them in whatsoever land

land they are, albeit they are out of his Authority: For the purſuit and the poſſeſſion after ſhall be adjudged as a poſſeſſion with continuance, when it is for Rent-ſervice: But it is otherwiſe for damage feſant; and ſo the diverſity is held 16 E. 4. fol. 10. yet H. 6. R. 2. abr. per Fitz. Reſcous 11. it is held alſo juſtifiable for damage feſant; and all this is allowed for the neceſſity of the occaſion, and in favour of right and juſtice.

nit patent *ed in the* *ings Court.*

38 If a man hold as of a Seigniory in groſſe, which hath not a Mannor, where the Lord may keepe any Court, in ſuch Caſe the Tenant may ſue Briefe de droit patent in the Kings Court, and the Lord ſhall not have any Action againſt him for it, nor by any meanes annul his Action, becauſe he hath not any Court to hold plea thereof; And therefore he is compelled by neceſſity to ſue immediately in the Kings Court. F. N. B. 3. e

Writ of right *of Dower ſu-* *able in the* *C. B.*

39 If the Baron give part of his Mannor in taile to hold of him and die, the Feme ſhall ſue her writ of right of Dower in the Court of the Heire of the Baron againſt the Donée in taile, and the writ ſhall be directed to the Heire: But if the Baron make a Gift in taile, of all the Land he hath and die, here the Heire of the Baron cannot keep any Court, becauſe he hath but a Seigniory in groſſe; and therefore in ſuch Caſe it ſeemes reaſonable, that ſhe ſhall have her writ of right of Dower againſt the Donée in taile, directed to the Sheriffe and returnable in the Common Place, and there ſhall be this Clauſe in the Writ, Quia B. Capitalis Dominus feodi illius nobis inde remiſit Curiam ſuam. So it is alſo if the Baron leaſe all his Land for life, there alſo the Feme ſhall ſue ſuch a Writ againſt the Tenant for life, returnable in the Common Place, becauſe the Heire of the Baron in that Caſe alſo can keepe no Court, having but a Seigniory in groſſe: And in theſe Caſes and the like the Lord ſhall not ſue a prohibition to the Juſtices of that Court, that they ſhould not proceed in ſuch pleas; for that the Feme in ſuch Caſes is forced by neceſſity to do it. F. N. B. 8. a. b

lapſe.

40 If an Infant or Feme covert preſent not within 6 moneths, the Biſhop ſhall preſent by lapſe, for there is a neceſſity the Church ſhould be ſerved. Fitz. ib. 34. c

Waſte.

41 Where waſte is made by the Kings enemies, or by tempeſt, the Tenant ſhall not be puniſhed for it. Fitz. ib. 59. l.

42 Ubi aliud ſuadet neceſſitas, ceſſat humanæ conſtitutionis, ceſſat & verbum legis Nomothetæ. Erasm. in Coll. Conv. Proph.

Quid juris *clamat.*

43 A Dedimus Poteſtatem was granted to receive an Attorney for the Defendant in a Quid Juris clamat, albeit no former Preſident could be found for it, and this was allowed per Curiam, by reaſon of the weakeneſſe of the Defendant, who could not appeare in perſon without manifeſt danger of life. Dier 135. pl. 15. 3, 4. P. M.

ming a *p at Sea.*

44 Hob. 13. Bridgmans Caſe, per Hobart concerning the Maſters impawning of another mans Ship at Sea for neceſſity of fact, or other proviſion. Hob. 13.

over by a *natick.*

45 An Action of Trover and Converſion may be brought in a Lunatiques owne name, for graine ſowne upon his Copi-hold land and caried away by a ſtranger, and that for neceſſity, becauſe it can be brought in no mans name elſe. Ho. 215. *Cocks* and *Darſon.*

111. 2 Conveniencie.

Co. l. 9. 49. a. b. The Earl of *Shrewsburies* Case. Vide Max. 184 cap. 5.

1 If a Perſonage be granted to an Earl, without words to make a Deputy, yet he may keep it by his ſervants: for the Law doth allow divers acts for convenience in reſpect of the Dignity of the perſon, as if Licence be given to a Duke to hunt in a Parke, the Law for convenience given him ſuch attendants, as are requiſite to the Dignity of his Eſtate, Vide, 12 H. 7. 25. & 13 H. 7. 10. So when a Biſhop is riding forth, or upon the way, it is not convenient for his Eſtate and Degree to be then inforced to examine the Ability of a Clerk, but he ought ſo attend his convenient leaſure. 14 H. 7. 21. 15 H. 7. 7. & 8. Dignity reſpected for convenience.

Co. ibid. and Mirror of Juſtices, cap. 1. §. 2.

2 At the firſt inſtitution of this Monarchy an Earl was Præfectus, or Propoſitus Comitatus; for ſo the Saxon word Shire-reeve imports; The Romans called him Satropas, from the Perſians, viz. Præfectus Provinciæ; And the Sheriff at this day (called Vice-comes, quaſi vicem gerens ſeu vicarius Comitis.) hath the whole authority for the Adminiſtration and Execution of Juſtice, that the Earl had, and if the King do now by his Letters Patents commit unto the Sheriff cuſtodiam Comitatus, without expreſſe words to make a Deputy, yet he (who comes in the place of the Earl,) may make a Sub-vice-comes, viz. a Deputy, who was in times paſt Seneſchallus Vice-comitis, and by Weſt. 2. cap. 39. Sub-vice-comes, and by 11 H. 7. cap. 15. Shire-Clerk. The like.

Co. ib. in the E. of *Shrewsburies* Caſe.

3 Before the Statute of Quia Emptores terrarum, 18 E. 1. the King or any other had given Lands to hold of him in Knights-ſervice, viz. to attend the King 40 dayes in his Oſt ſufficiently armed, &c. in this Caſe the Law had ſuch regard to the Honor of Knight-hood, (which is the loweſt Degree of Dignity,) that he might find an able perſon to go with the King in his Warres, Vide. 7 E. 3. 29. and this was for convenience, &c. The like.

Co. ib. the principal caſe.

4 19 Eliz. by Patent granted to the Earl of Shrewsbury, Seneſchal Dominiorum ſive Maneriorum de Mansfield, Bolſover, & Hoſley, without giving him power therein to make a Deputy, yet he might make a Deputy; becauſe it was not convenient that the Earl ſhould keep ſuch baſe Courts himſelf. A Peer Seneſchal, may make a Deputy.

Pl. 9. b. 18. b.

5 The Statute of Marlebridge, prohibits that none ſhall bring a Writ out of one County into another, yet it is held per totam Curiam, Mich. 1, H. 6. Pl. 9. fol. 3. (abridged by Fitz. Tit. Diſtreſſe, 1.) that where a Manor extends into two Counties, the Lord may ſue in either County; and bring the Diſtreſſe into the other County where the Rent is, and this is to avoid the miſchief and inconvenience, that would enſue, if the Lord ſhould be reſtrained from bringing the Diſtreſſe to his Manor. But ſee the contrary adjudged in 30. E. 3. 5. A Diſtreſs may be brought in another County.

Co. Inſt. p. 1. 210. b. 1.

6 If the Condition of a Bond or Feoffment be to pay, or do any thing upon, or unto, the place being appointed, where it ſhould be paid, in ſuch Caſe, the Obligor or Feoffor is bound (at the day of payment) to find out the Obligee or Feoffee to make payment or tender thereof, if he be in England, but if the Bond or Feoffment be to deliver 20 Quarters of Wheat, or 20 Loads of Timber, or the like; In ſuch Caſe, the Obligor or Feoffor is not bound to carry the ſame about, or to ſeek the Obligee or Feoffee; but in ſuch Caſe the Obligor or Feoffor muſt go to the Obligee or Feoffee before the day of payment, and know where he will appoint to receive it, and there it muſt be delivered; and this the Law directs for the convenience: So if rent be

be ſtanding out of Land, it ought to be tendred upon the Land: But Homage or any other ſpecial corporal Service, muſt be done to the perſon of the Lord, and the Tenant ought (by the Law of convenience) to ſeek him, to whom the Service is to be done, in any place within England: In like manner if a man be bound to pay 20l. at any time during his life, at a certaine place; the Obligor cannot tender the Money at the place, when he will, for than the Obligee ſhould be bound to perpetual attendance, and therefore the Obligor (in reſpect of the uncertainty of the time, and for convenience ſake,) muſt give the Obligee notice, that on ſuch a day at the place limited, he will pay the Money, and then the Obligee muſt attend there to receive it: for if the Obligor then and there tender the Money, he ſhall thereby ſave the penalty of the Bond for ever: There is the ſame Law; if a man makes a ſeoffment in fee upon Condition, that if the ſeoffee at any time during his life pay the ſeoffee 20l. at ſuch a place certaine, that then, &c. In this Caſe alſo the ſeoffee muſt give notice to the ſeoffee, when he will pay it: but in both theſe laſt Caſes, if the Obligor or ſeoffor at any time meet the Obligee or ſeoffee at the place he may tender the Money: Likewiſe if A. be bound to B. with Condition, that C. ſhall enfeoff D. on ſuch a day, here C. is bound to ſeek D. to give him notice, when he will do it.

mage. 7 No man of Religion (Regular or Secular,) when he doth Homage ſhall ſay, I become your man, for that were inconvenient, becauſe he hath profeſſed himſelf the man of God; yet ſhall he do Homage, and ſay, I do unto you Homage, and will be unto you Faithful and Loyal, &c. And this Homage of Eccleſiaſtical perſons in the old Books and Records of the Law is called Fealty, for that it wanteth theſe Words, I become your man, yet in judgment of Law it is Homage, becauſe he ſaith, I do to you Homage, &c. There is the ſame Law alſo of a feme ſole, for it is not fit that ſhe ſhould ſay to her Lord, I become your woman, but ſhall ſay, I do you Homage, &c. Argumentum ab inconvenienti plurimum valet in lege: Non ſolum quod licet, ſed quid eſt conveniens, eſt conſiderandum; Nihil, quod eſt inconveniens, eſt licitum. Co. Inſt. p. 1. 65. b. 3.

nment. 8 Attornment is appointed by Law to avoid inconveniences. See Co. Inſt. part 1. 309. a. 3. & Max. 121. cap. 3.

112. 3 Conformity.

nment ſum. 1. In ancient time when a man did endow his Wife ad oſtium Eccleſiæ, he did there openly declare the quantity and certainty of the Land, wherewith ſhe was ſo to be endowed; for the Law (for Conformity ſake) doth delight to have that and like acts to be openly and ſolemnly done. Co. Inſt. p. 1. 34. b. 1.

r of rent be deli- by the ff. 2 If a woman bring a Writ of Dower of ſix pounds Rent-charge, and ſhe hath judgment to recover the third part, Albeit it be certain that ſhe ſhall have 40 s. yet ſhe cannot diſtrain for the 40 s. before the Sheriff do deliver the ſame to her: For here, becauſe ſhe demands nothing in certaine, but onely a third part of the Rent, ſhe ſhall not diſtrain for it before Execution ſued, and thereupon a third part thereof delivered unto her in certaine by the Sheriff; It is otherwiſe of Land Rent, or other things demanded in certaine, for in ſuch caſes the Demandant after judgment may enter and diſtraine before Seiſin delivered by the Sheriff upon a Writ of Habere facias ſeiſinam: Alſo when the Wife of a Tenant in Common demands a third part of a moity, yet after judgment ſhe cannot enter, untill the Sheriff deli- Co. ib. 34. b. 3.

deliver her the third part, albeit such delivery of the Sheriff shall reduce it to no more certainty, then it had before, and all this is for conformities sake, that the proceeding may be orderly.

Co. lib. 53.b.3. 3 None shall have an Action of Waste, unlesse he have the immediate Estate of Inheritance, yet sometimes another shall joyn with him for conformity, as if a Reversion be granted to two, and the Heires of one, they two shall joyn in an Action of Waste; So likewise shall the surviving Co-parcener, and the Tenant by the Courtesie joyn: Also if there be two Joynt-tenants, and to the Heires of one of them, and they make a Lease for life, they shall joyn in an Action of Waste for the same reason. Joynder in Waste.

Co. l. 2. 77. b. 1: The Lord *Cromwels* case. 4 B. seised of a Mannor with an Advowson Appendant by Indenture bargaines and sells the Mannor to A. and covenants to suffer a Recovery, and levie a Fine to A. in Fee, and that the said A. shall render by the Fine to B. 42 l. per annum Rent; provided that A. shall grant the Advowson to B. for life, and if he die before any avoydance, then one turne to his Executors, and it was further Covenanted that all Assurances to be made should be to the said Uses: The Recovery is had, B. and A. levie a Fine to P. who renders the Mannor, with the Advowson to A. in Fee, and the Rent to B. Proclamations passe; A. dies before the Grant of the Advowson, the Church becomes voyd in the life of B. E. enters as Heir to A. B. enters, and without any request for the Advowson, bargaines and sells to the Lord Cromwel, for whom it is adjudged: And in this Case it was resolved, that albeit the Fine was not acknowledged by B. to A. according to the Covenant, yet the acknowledgement by B. and A. to a Stranger was adjudged a good performance of the Covenant, because B. and A. joyned in the Fine for conformity, to the end (by that meanes) A. might take the Mannor, and B. the Rent, but B. had the Mannor again, because the Condition was not performed. Joynder in Fine.

Ibid. 5 Albeit a Fine is of so high a nature, that the Law doth not suffer any bare Averrement against the purport, and Conusance of a Fine, yet when the Law requires one for conformity to joyn with another in a Fine, it suffers him to shew the truth of the matter, for the avoyding of prejudice and conclusion: So in 30 and 31 El. in a Writ of Error to reverse a Fine levied by Baron and Feme, for the Non-age of the feme, the Baron and feme had Restitution presently, and the Conusee could not detaine the Land during the Coverture, because all the Estate passed from the feme, and the Baron onely joyned for conformity Vide Pl. ibid. Joynder in Fine.

Co. l. 6. 47. a: 1: *Dowdales* ca. 6 In Debt against Executors, the Defendant pleads plene administravit, the Plaintiff replies that he hath Assets in E. and the Jury finds Assets in Ireland, and the Plaintiff recovers; For when the place is materiall, as when it is parcel of the issue, there the Jurors cannot find the point in issue in any other place, because in such case, by special pleading the point in issue is restrained to a certaine place: For there is a diversity, when the place is named onely for conformity and necessity, and when it is parcel of the issue, as in the Case of 10 El. Dyer 271. In Debt against the Heir, he pleads riens per discent generally, in this Case the Plaintiff cannot reply in such a generall manner, for then there could be no trial of it, but in such Case for conformity and necessity of a Trial, he ought to name a certaine place, as he did there in a Parish and Ward in London, nevertheless there the Jurors might find Assets in any other County of England, &c. Assets found any County

113. 4 Colour.

113. 4 Colour.

1 If a man ſeiſed of Land hath iſſue two Sonnes, and dieſeiſed, and the youngeſt enter by abatement, and hath iſſue and dies thereof ſeiſed, and the Tenements deſcend to his iſſue, and the iſſue enter: This is no diſcent to take away entry, becauſe they both claiming by one Title, and from the ſame Anceſtor, the youngeſt had colour to enter as heir; So it is alſo if there be five Siſters, and the eldeſt enter, &c. and albeit in either of the ſaid Caſes there be never ſo many diſcents caſt, yet may the Heirs, the elder Brother or younger Siſter enter, cauſa qua ſupra. Likewiſe, if there be Baſtard eigne, and Mulier puiſne, if the Baſtard enter, and is peaceably ſeiſed all his life, and die, and his iſſue enter, the Mulier ſhall not enter; for he hath more colour to keep it as eldeſt Sonne, then in the aforeſaid Caſes; And therefore the Mulier in ſuch Caſe is left without remedy, and hath loſt the Land for ever, whereas the other are left in their Action: And it is holden, that albeit the heir be under age at the time of the diſcent caſt, yet that ſhall not help it, for the Law preferres Legitimation before Infancy; becauſe there being no Claim all his life-time, the Law implies Legitimation; And when the Diſcent is caſt, Juſtum non eſt aliquem poſt mortem facere baſtardum, qui toto tempore vitæ ſuæ, pro Legitimo habebatur. See more in the firſt Part of the Inſtitutes, fol. 242, 243, 244, & Litt. §. 400. Litt. §. 396. Co. Inſt. p. 1. 242. a.

2 If there be Lord and Tenant by fealty onely, and the Lord diſtraines the Tenant for Rent, whereupon the Tenant brings an Action of Treſpaſſe againſt the Lord, who juſtifies for fealty and Rent, and the Jury finds, that he holds by fealty onely; yet the Writ ſhall abate, becauſe he held of him by fealty, and the matter in iſſue is, whether he holds of him or no, and it being found he dies, the Lord had ſufficient colour to diſtraine him, and therefore in that caſe the Action ſhall abate. Litt. §. 484. Co. ib. 281. b. 4.

3 If A. be appealed or indicted of Murder, viz. that he of Malice prepenſe killed I. A. pleadeth not guilty modo & forma, yet the Jury may find him guilty of Man-ſlaughter without Malice prepenſe, for if in truth it was but Man-ſlaughter, they had colour enough to find it ſo. Co. ib. 281. a. 1

4 If two be in an Houſe together, the one claiming by one Title, and the other by another, the Law adjudges him in poſſeſſion, who hath right to the Houſe for Duo non poſſunt in ſolido unam rem poſſidere; yet if a man hath iſſue two Daughters, Baſtard eigne, and Mulier puiſne, and die ſeiſed, and they both enter generally, the ſole Poſſeſſion ſhall not be adjudged onely in the Mulier, becauſe they both claime by one and the ſame Title, and the Baſtard hath as well colour to claime it as the Mulier. Litt. §. 701. Co. ib. 368. a 2.

5 If the Baſtard eigne enter, and take the profits, he onely ſhall be vouched, and not both the Baſtard and Mulier, for there is colour enough to vouch him alone, he being heir in appearance, and he is not bound to diſ-able himſelfe. Co. ib. 376. b. 3.

6 If an Ordinary of a Dioceſe commits Adminiſtration of Goods, when they are bona notabilia, ſuch Adminiſtration is meerly void: but Adminiſtration committed by the Metropolitan, when the deceaſed had not bona notabilia, is onely voidable: becauſe he hath Juriſdiction in all the Dioceſes within the Province, and therefore hath ſufficient colour to do it. Co. l. 29. b. 4. in *Princes* Caſe. *Were* and *Jefferies* Caſe.

7 An

Co.l.6.65.a.3. in Sir *Moile Finches* Case.

7 Jn 41 E.3. 19. Rich. Tompſon had Iſſue by Joan (before mariage) one Agnes, and after he marries Joan, and makes feoffment in fee, and retakes the Eſtate to himſelfe for life, remanere inde Agnetæ filiæ prædict. Rich. & Johannæ: Alſo it was agreed that this was a good remainder, without any averment, that ſhe was known to be their Daughter: for albeit by the Common Law ſhe was not their Daughter, yet inaſmuch as ſhe had colour by the Eccleſiaſtical law (which ſaith, ſubſequens matrimonium tollit peccatum precedens) this colour is ſufficient in caſe of a conveyance to make the remainder good, and ſo note the diverſity between diſcent and purchaſe, &c. A Baſtard takes by purchaſe.

Co.l.8.101. *per totam Sir T. Leighes Case. The Lord hereupon opinion per Coke.*

8 If there be Baſtard eigne and Mulier puiſne, and the Father dieth ſeiſed, the Mulier being beyond Sea, within age, in Priſon or Normandie memorie, and the Baſtard enter and continue in peaceable poſſeſſion of the Lands, and hath Iſſue and dies, and the lands deſcend to his Iſſue, here the right of the Mulier is for ever bound: becauſe he hath colour of legitimation by the Law of Holy Church; and the Common Law reſpects legitimation, before the abuſe and ſuperſtition. Vide plus infra. Mulier beyond Sea, &c.

Co.l.10.76. b. in the Case of the *Marſhalſea.*

9 If a Sheriffe holding his Turne after Michaelmas moneth takes there an Indictment of Robbery, it is utterly voyd, being coram non judice. But if the Court of the Common Bench in a plea of Debt award a Capias againſt a Duke, Earle, or, &c. which by the Law lyeth not againſt them, and that appeares in the writ it ſelfe, here if the Sheriffe arreſt them upon the Capias, albeit the writ be againſt Law, yet becauſe that Court hath juriſdiction of the cauſe, the Sheriffe hath colour to do it, and ſhall be excuſed; and herewith accords Dier 60. b. 38 H. 8. So alſo if a Juſtice of Peace make a warrant to arreſt one for Felony, who is not indicted, albeit the Juſtice erre in granting the warrant, yet he that makes the arreſt by force of that warrant ſhall not be puniſhed by writ of falſe impriſonment, becauſe the Juſtice is Judge of the Cauſe. Things done by warrant & coram.

Plow.83.b.1. in *Strange* and *Crokers* Case.

10 Jn 9 H. 6. it is ſaid, that if I grant to B. that if my Tenant for life die during my life, that then B. ſhall have the Land for 20 yeares: Here, if my Tenant be impleaded, B. may lawfully maintaine, in reſpect of the Colour of title he hath to the Land. Maintenance.

Co.Inſt p. 1. 248.b.4.

11 Entry into Religion and profeſſion of a Diſſeiſor, ſhall not cauſe a deſcent to toll the entry of the Diſſeiſee, becauſe it is the Diſſeiſors owne Act, and not the Act of God, as death is: yet if there be Baſtard eigne and Mulier puiſne, and the Baſtard before claime enter into Religion, it is ſaid ſuch a diſſent ſhall toll the entry of the Mulier, by reaſon of the colour of title that the Baſtard had to the land, and ſuch an heire ſhall alſo have his age. Baſtard. Mulier.

114 It prizeth the Acts of God and of the Law more then thoſe, that are done by the party.

Co.Inſt.p.1. 18.a.4.

1 Fee ſimple being (as Littleton ſaith) the largeſt Eſtate of inheritance that is, one Fee-ſimple cannot depend upon another by the grant of the party, as if Lands be given to A. ſo long as B. hath heires of his body, the Remainder over in Fee, here the Remainder is voyd; yet in ſeveral perſons by Act in Law a reverſion may be in Fee-ſimple in one, and a Fee-ſimple determinable in another by matter ex poſt facto, as if a Gift in taile be made to a Villein, and the Lord enter the Lord hath a Fee-ſimple qualified and the Donor a reverſion in Fee, but if the Lord enfeoffe the Donor, now both Fee-ſimples are united; and he hath but one Fee-ſimple in him. Two Fee-ſimples.

2 When

heires female shall not take.

2 When a man giveth lands to another man and the heirs female of his body & dieth having issue a son & a daughter, the daughter shall inherit for the will of the donor (the Stat. working with it, which is upon the matter an act in law) shall be observed, but in case of a purchase it is otherwise; for if A. have issue a son & a daughter, & a lease for life is made, the remainder to the heirs females of the body of A. A. dieth, the heire female can take nothing, because she is not heire, for she must be both heire & heire female, which she is not, because the brother is heire, and therefore the will of the giver cannot be observed, because here is no gift, and therefore the Statute cannot work thereupon, so it is, if a man hath a son and a daughter and dieth, & lands are given to the daughter and the heirs females of the body of her father, the daughter shall take nothing but an Estate for life, because there is no such person, she being not heire, but where a gift is made to a man, and to the heirs female of his body, there the Donee, being the first taker, is capable by purchase, and the heire female by discent, secundam formam doni. Co. lib. 24. b. & 25. b. 3. & 26. b. 4.

Estates may be altered.

3 Regularly Estates cannot be altered from one to another, unlesse all that have interest joine in the alteration thereof; but by the Act of God estates may be changed without any act done by the parties, that are interessed: as if lands be given to a man and the heirs that he shall engender of the body of his wife: here the wife hath nothing; and the man is Tenant in special taile: & therefore in this Case if the Feme die without issue on her body begotten by the Baron, the estate in special tail, is (by the act of God) changed into tenancy in tail after possibility of issue extinct. Litt. §. 33. Co. lib. 28. a.

Changing of Estates.

4 If a feoffment in fee be made to the use of a man and his wife for the term of their lives, and after to the use of their next issue male in taile, and after to the use of the Baron and Feme and the heires of their two bodies, having no issue at that time: in this Case the Baron and Feme are Tenants in special taile executed; and after they have a son they are become Tenants for life, the remainder to the son in tail, the remainder to them in special taile: and here, albeit (living the son) they are but bare Tenants for life, yet if the Baron die having no other issue, and then the son die without issue, the Feme shall be restored to the priviledges belonging to tenant in tail after possibility of issue extinct, as appeares in Lewes Bowles Case, Co. l. 11. fol. 80. for (as there is said) the Estate of the Feme (in such Case) is created by the act of God, and not by the limitation of the party, ex dispositione legis, and not ex provisione hominis: but if land be given to Baron and Feme, and the heirs of their two bodies, and after they are divorced causa precontractus, consanguinitatis or affinitatis; their Estate of inheritance is turned to a joint Estate for life, and albeit they had once an inheritance in them, yet for that the Estate is altered by their own Act, and not by the Act of God; after the death of either of them without issue, the other shall not be Tenant in tail after possibility of issue extinct. Co. lib. 28. a. 3.

is not endowed.

5 If a man take an alien to wife, and after the husband alien y land, and then she is made denizen, the husband dieth, she shall not be endowed, it is otherwise; if she be naturalized by act of Parliament. Co. lib. 33. a. 4.

of death.

6 The Feme shall not not be endowed after the Civil death of the Baron, (entring into Religion, &c.) being the act of the party, but after the natural death, which is the Act of God. Co. lib. 33. b. 2.

Joint-tenants may do.

7 If two or more be joint-tenants of lands, one of them may assigne power to the wife of a third part in certainty, and this shall bind his companions, because they were compellable to do the same by law: but if one of them assigne a rent out of the land to the wife, this shall not bind his companions, because he was not compellable by the law thereunto. Co. lib. 34. b. 4.

Co.lib.57.b.5. 8 There is a diversity between particular Estates made by the Tenant-tenant, and particular Estates created by Act in Law: For if Tenant pour autre vie continueth in possession after the decease of Cestuy que vie, or Tenant for yeares holdeth over his terme, the Lessor cannot have an Action of Trespas before entry: but if a Guardian after the full age of the heire continueth in possession, he is no Tenant at sufferance, but an Abator, and against him an Writ of Spoliation or, lieth before entry. Trespas before entry, contrd.

Co.lib.59. b.4. *Armestrongs* Case certified into the Chancery by *Popham*, and others. 39 Eliz. 9 Fines due to the Lord, by the Copi-holder, some by the change or alteration of the Lord, and some by the change or alteration of the Tenant, the change of the Lord ought to be by Act of God, otherwise no fine can be due, but by the change of the Tenant, either by the Act of God, or of the party, a fine may be due: For if the Lord do alienge a Customs within his Mannor to have a fine of every of his Copi-holders of the said Mannor, at the alteration or change of the Lord of the Mannor, be it by alienation, remise, death, or otherwise, this is a Customs against the Law, as to the alteration or change of the Lord by the act of the party; for by that meanes the Copi-holders may be oppressed by multitude of fines, by the Act of the Lord, but when the change groweth by the Act of God, there the Customs is good, as by the death of the Lord: but upon the Change or alteration of the Tenant, a fine is due to the Lord. Copi-hold. Fines.

Co.ib.72. b.1. 10 If the Tenant goeth with the King in performance of his Knight-service and dieth in Exercitu, in the Host or Army, he is excused by Law, and no Escuage shall in that Case be demanded. Escuage.

Co.ib.102.a.4 11 In Case of Homage Ancestral (which is a special warranty in Law) by the authority of Litt. the lands generally, that the Lord hath at the time of the voucher, shall be liable to the execution in value, whether he hath them by discent, or purchase: but in Case of an expresse warranty; the heire shall be onely charged for such lands as he hath by discent from the same Ancestor, who created the warranty; and for note, what priviledge this expresse warranty (created by operation of Law) hath more then the expresse warranty: for, firmior & potentior est operatio Legis, quam dispositio hominis. Homage. Ancestrel

Co.ib.127.a.1 in *Beechers* Case. Co.l.8.60.b. 12 If a writ be abated by the Act of the Demandant or Plaintiffe, or for matter of form, the Demandant or Plaintiffe shall be amerced; but if abate by the Act of God, as by the death of one, where there is two, or the like, there shall be no amerciament. Amerci

Co.ib.148.a.3 *Wards* Case cited in Co. l.2. fol.32. in *Heywards* Ca. 13 When a rent-charge is extinguished by the grantee purchase of part of the land, the grantee shall never have a writ of annuity, because it was by the grant a rent-charge, and he hath discharged the land of it by his own Act, viz. by purchase of part; but if the rent-charge be determined by the Act of God, or of the law, yet the grantee may have a writ of annuity: as if Tenant for another mans life by his deed grant a rent-charge to one for 21 yeares, Cestuy que vie dieth, the rent-charge is determined, and yet the grantee may have during the yeares a writ of annuity for the Arrerages incurred after the death of cestuy que vie, because the rent-charge is determined by the Act of God and by course of law, Actus legis nulli facit injuriam: The like law is, if the land, out of which the rent-charge is granted be recovered by an Eigne title, and thereby the rent-charge is defeated, yet the grantee shall have a writ of annuity, for that the rent-charge is avoided by the course of law. Rent-charge extinguish no Annuity

Co.lib.148.b.1 Litt. § 222. in *Aschoughs* ca. vide infrà 48. 14 Littleton saith, that a Rent-service may be extinct for part, and apportioned for the rest, but it cannot be suspended in part by the Act of the party, and in esse for the other part; for if there be Lord and Tenant Rent-suspend contrd.

Tenant of 40 acres of Land by fealty and 20 s. Rent, if the Tenant make a Gift in tail, or a leaſe for life or years; of parcel thereof to the Lord, in this Caſe the Rent ſhall not be apportioned for any part, but the Rent ſhall be ſuſpended for the whole: So it is alſo if the Lord enter upon the Leſſee for life or yeares into part, and thereof diſſeiſe or put out the Leſſee, here the Rent is ſuſpended in the whole, and ſhall not be apportioned for any part, and where ours Books ſpeake of an apportionment in Caſe where the Lord entets upon the Leſſee in part; they are to be underſtood, where the Lord enters lawfully, as upon a ſurrender, forfeiture, or the like, where the Rent is lawfully extinct in part: yet by act in Law a Rent-ſervice may be ſuſpended in part, and in eſſe for part, as when the Guardian in Chivalry entreth into the lands of his ward within age, now is the Seigniory ſuſpended, but in this Caſe if the wife of the Tenant be endowed of a third part of the tenancy, ſhe ſhall pay to the Lord a third part of the rent: ſo it is alſo where the Tenant gives a part of the tenancy to the father of the Lord in tail, the father dieth, and this deſcends to the Lord, in this Caſe alſo by Act in Law the Seigniory is ſuſpended in part, and in eſſe for part; And the ſame Law is of a Rent-charge, which alſo cannot be apportioned but by Act in Law, for if a man hath a rent-charge to him and his heirs iſſuing out of lands, and he purchaſe part thereof, in this Caſe the whole rent is extinct; but if a man hath a Rent-charge and his father purchaſe part of the land, out of which it iſſues, in fee, and die, and that parcel deſcends to the ſon, that hath the rent-charge, in that Caſe the rent-charge ſhall be apportioned according to the value of the lands, becauſe the part of land purchaſed by the father comes not to the ſon by his own Act, but by deſcent and courſe of Law: So alſo if the Tenant give the father of the grantee part of the lands in tail, and this deſcends to the grantee, the rent ſhall be apportioned: and ſo by an in Law a rent-charge may be ſuſpended for one part, and in eſſe for another: or vice verſa, if the father be grantee of a rent, and the ſon purchaſe part of the land charged, and the father dieth, after whoſe death the rent deſcends to the ſon, here alſo the rent ſhall be apportioned, cauſa quâ ſuprà.

Litt. § 222, & 224.

Co. lib. 149. b. 4

15 If the father within age purchaſe part of the Land charged, and alieneth within age and dieth, the ſon recovereth in a writ of dum fuit infra ætatem, or entreth, in this Caſe the Act of Law is mixt with the Act of the party, and yet the rent ſhall be apportioned, for after the recovery or entry the ſon hath the land by deſcent: ſo it is alſo where the ſon recovereth part of the land upon an alienation by his father, dum non fuit compos mentis, for the cauſe aforeſaid.

Co. lib. 150. a. 1

16 A man ſeiſed of lands in fee takes wife, and makes a ſettlement in fee, the feoffee grants a rent-charge of 10 l. out of the Land to the Feoffor and his wife, and to the heires of the husband, the husband dieth, the wife recovereth the moity for her dower by the cuſtome, the Rent-charge ſhall be apportioned, and ſhe ſhall diſtraine for five pound, which is the moity of the rent: and here albeit her owne act doth concurre with the Act in Law, yet ſhall the Rent be apportioned.

Co. ibid.

17 If there be Lord Peſne and Tenant, and the Tenant holds of the Peſne by 5 s. rent, and Peſne holds over of the Lord by 12 d. rent, here the Peſne hath 4 s. rent in ſurplusage; Now in this Caſe if the Lord purchaſe the tenancy, The Peſne ſhall have the 4 s. paravayle rent ſecke, and yet he ſhall diſtraine for it: for ſeeing the fealty is extinct, the Law reſolves the diſtreſſe to the Rent, and the diſtreſſe in ſuch Caſe ſhall by act in Law be preſerved, Quia quando lex aliquid alicui concedit concedere videtur & id, ſeeu quo res ipſa eſſe non poteſt. Alſo therefore if a man make a leaſe for life, reſerving a rent, and bind himſelfe in a

Lit. § 232. Co. lib. 153. a. 1 vide infra, 40.

Statute, whereupon the Rent is extended and delivered to the Grantee; here the Grantee shall distraine for the Rent, because he cometh to it by course of law: but if a rent-service be made, a rent-seck by ỹ grant of the lord, the grantee shall not distrain for it: for that the distresse in that case remaines with the fealty: So likewise if there be Lord, Peine, and Tenant, and the mesnalty is a Manor having divers free-holders, and the Lord purchase one of the Tenancies, and there is a Rent by surplusage, this rent, although it be changed into another nature, is parcel of the Manor: yet by purchase of part of the land, the whole Rent is extinct, albeit the Law did preserve it.

Co. lib. 163. b. 4

18 There is a diversity between a discent, which is an Act of the Law, and a purchase which is an Act of the party; for if a man be seised of lands in Fee having Issue two Daughters, and one of the Daughters is attainted of felony, the Father dieth, both Daughters being alive, the one moity shall discend to the one daughter, and the other moity shall escheate: But if a man make a Lease for life, the remainder to the right heires of A. being dead, who left issue two Daughters, whereof the one is attainted of felony: In this Case some have said, that the remainder is not good for the moity, but void for the whole: because both the Daughters should have been (as Littleton saith) but one heire. Discent and purchase.

Co. lib. 164. b. 3

19 A Rent-charge is intire and against Common right; and yet it may be divided between coparceners, and by Act in law the Tenant of the land is subject to several distresses, and in that Case also partition may be made before seisin of the Rent. Rent-charge dividable.

Co. lib. 165. a. 4

20 If there be two Coparceners of lands with warranty, and they make partition, in this case the warranty shall remaine, because they are compellable by law to make partition: it is otherwise of joint-tenants for they were not by the Common law compellable to make partition. Coparceners

Co. lib. 166. b. 5

21 When partition is made betwixt Coparceners, the eldest sister hath the choice, and this is called Enitia pars of Eigne, or Eldest, but this privilege is personal to her alone, and shall not discend to her heire (for then the next sister hath it) because this partition is made personally by the Act of the parties, but where the law doth give the eldest any privilege without her Act there that privilege shall discend: As if there be divers coparceners of an advowson and they cannot agree to present, the law doth give the first presentation to the eldest, and this privilege shall discend to her issue, nay, her assigne shall have it, and so shall her husband that is Tenant by the courtesie have it also. Partition by Coparceners

Co. lib. 169. a. 1

22 A partition betwen jointenants is not good without deed, although it be of land, or other things, which may passe without deed, albeit they be now compellable to make partition by the Stat. of 31 H. 8. c. & 31 H. 8. 32. because they must pursue one of those Acts (as their case is) by writ de partitione facienda, and a partition betwen jointenants without writ remaines at the common law as it was before those Statutes, which could not be done by parol, and therefore such partition is meerely by Act of the parties: So it is also and for the same reason of tenants in common: But betwen Coparceners partition may be made by parol without deed, and that not onely of lands and other things, that may passe by livery without deed, but likewise of things that do lie in grant, as rents, Commons, Advowsons, and the like, that cannot passe by grant without deed, and that whether they be in one and the same County, or in several Counties: because in such partitions the act of the parties co-operateth with the act of law: so likewise if two tenants in common make Partition by parol & c

Dier 29. a. 194. 18 H. 8.

partition

partition by parol & execute the same in severalty by livery, this is good and sufficient in Law, because here also the act of the party worketh together with the Livery, which is an Act of Law: And therefore where Books say, that Joyntenants may partition without Deed, it must be intended of Tenants in Common, and executed by Livery: But the chiefest Reason why Perceners have this Privilege above Joyntenants or Tenants in Common is, because they come to their Estates by Discent, which is an Act in Law, but these by Purchase, which is an Act of the parties: And the Reason why Joyntenants cannot make Partition by Parol, with Livery, as Tenants in Common may, is because betwixt Tenants in Common, there is onely privity in possession, but betwixt Joyntenants, there is as well privity in Estate, as privity in possession, and therefore they cannot convey their Estates one to another, without Deed, as Tenants in Common may, who have several Estates, and claim under several Titles.

...ke may without

23 An Exchange of Lands in the same County may be without Deed, but a Rent granted for Equity of the same Exchange, cannot be without Deed; yet if two Messuages discend to two Co-perceners the one worth 20 s. per annum, and the other worth 10 s. the assignment of 5 s. per annum, to be paid to the Co-percener, that hath the Messuage of 10 s. per annum, and her Heires, is good by Parol without Deed: And the Reason of this is, because Co-perceners are in by Discent, which is an Act of Law, but the Exchange is the Act of the parties: So it is also of Common of Estovers, a Corodie, Common of Pasture, &c. or of a Way granted by one Co-percener to the other; All which (and the like,) albeit they lie in Grant, yet may they upon the Partition be granted without Deed; causa qua supra. Co. lib. 169. a. 3 Littl. §. 251.

...Co-parmarried.

24 If there be three Co-perceners, and one of them be married, and for Equity of partition the Husband and Wife grant a Rent to the other two, out of the part of the Feme Covert; this partition (albeit it be not by Fine) being equal, shall charge the part of the Feme Covert for ever, causa qua, &c. Co. lib. 169. b. 3

...tition by ...as, and ...es, and In...

25 If two Co-perceners of Lands take Barons, and they and their Barons make Partition, if the Partition was un-equal, at the time it was made, after the Barons death it may be reformed, and it shall not bind the Co-percener that was wronged; but if then the Partition was equal, (albeit it was not by Fine; it shall bind them for ever; because the Partition is made as well by Act of Law, as by that of the parties, the Barons and Femes being compellable by Law to make Partition: And therefore if after such Partition made, the Land become un-equal, by any matter subsequent; as by surrounding, ill Husbandry, or the like, yet the Partition remaines good: Solikewise in Case of an Infant; if the Partition be equal at the time of the Allotment, it shall bind him for ever, because he is compellable by Law to make Partition, and he shall not have his age in a partitione facienda; And though the Partion be un-equal, and the Infant hath the Lesser part, yet is not the Partition void, but voidable by his entry; for if he take the whole profits of the un-equal part for his full age, the Partition is made good for ever; And therefore Littleton (Sect. 258.) giveth him a Cavear, that in that Case he take not the whole profits of his un-equal part, neither shall a unequal part in the Chancery bind an Infant: but a partition made by the Writ of Partitione facienda, by the Sheriff upon the Oath of 12 men, and Judgment thereupon given, shall bind the Infant, though his part Co. lib. 171. a. 4 Litt. §. 258. Co. lib. 171. a. 2 Litt. §. 256, 257.

Co.lib.172.a.b. be unequall, for this is by Act of Law: And generally whatsoever an Infant is bound to doe by Law, the same shall bind him, albeit he doth it without suit of Law; as if an Infant be Executor, here, upon payment of any Debt due to the Testator, he may make an acquittance, but in that Case a Release without payment (before his age of 21 yeares,) is void.

Litt.§.260. Co.lib.173.a.b. 26 Partition amongst Coparceners maketh no Discontinuance; for if Lands be given to a man in tail, who hath as much Land in Fee-simple, and he hath issue two Daughters and dies, and the Daughters make partition, so as all the Fee-simple Lands are allotted to the youngest Sister, and the entailed Lands to the Eldest, in this Case, after the Death of the youngest Sister, her issue (after the alienation of Fee-simple Lands by her Mother) may enter into the entailed Lands, and hold them in property with her Aunt, because the issue has no recompence for the moity of the entailed Land, and such Partition made no Discontinuance; because (in that Case) it passes not by Livery of Seisin, which is an act in Law, but the Partition is in truth lesse then a Grant, for that it maketh no degree, but each Coparcener is in by discent from the Common Ancestor. Partition makes no continuance.

Litt.§.263. Co.lib.174.b.3 27 If there be three or four Parceners, who make Partition, and the part of one of them is evicted by lawfull entry, in this Case she shall hold the other Lands with her other Sisters, and so it is also between the surviving Parceners; and the Heires of the other, or with the Heires of Parceners, all being dead: It is otherwise of Joyntenants, that make Partition by Deed, for that is by act of the parties, and then the Warranty is destroyed: but if Joyntenants make Partition by Writ upon the Statutes of 31 or 32 of H. 8. the Warranty continues, because that is by Act, and in Course of Law: but Parceners and their Heires coming in by Act of Law, viz. by Discent have the same Priviledg above Joyntenants after Partition, as aforesaid. The Parcener part evicted.

Co.lib.181.b.2. 28 There is a Diversity between Authorities created by the parties for private Causes, and Authority created by Law, for Execution of Justice; As if a man make a Letter of Attorney to two, to do an Act, if one of them die, the survivour shall not do it, but if a Venire Facias, be awarded to four Coparceners to impanel and return a Jury and one of them die, yet the other shall execute and return the same: So if a Charter of Feoffment be made, and a Letter of Attorney to four or three joyntly and severally to deliver Seisin, two of them cannot make Livery, because it is neither by them four or three joyntly, nor by any of them severally; but if the Sheriff upon a Capias directed to him, make a Warrant to four or three joyntly or severally to arrest the Defendant, two of them may arrest him, because it is for the Execution of Justice. Authority to do a thing.

Co.lib.192.b.2 Litt.§.302. 29 If there be two Co-parceners in Fee, and the one makes a Lease for life, this is no severance of the Co-parcenery, for notwithstanding that Lease, the Reyn shall make one Moyety upon them both: but if there be two Joyntenants, and one of them makes a Lease for life, this is a severance of the Joynture, and several Moyeties shall be made upon them: And here the Reason is, because Coparceners come in by Discent, but Joyntenants by purchase, the one being the Act of Law, and the other the Act of the Party. Partition of Parceners, Joyntenants.

Co.lib.215.a.1. 30 At the Common Law before the Statute of 32 H.8.34. the Grantee of a Reversion under an Estate for life or yeares could not take advantage of a Condition in Deed, as if Lease were for life or Conditions Deed, and Law.

of yeares reſerving Rent upon Condition that if the Rent were not paid at the day, the Leſſor and his Heires might re-enter, here if the Grantee of the Reverſion could not (before that Statute) take any advantage of Entry upon the breach of that Condition for the non-payment of the Rent at the day limited by the Leaſe: But before that Statute and ſince, the Grantee of a Reverſion may take advantage of a Condition in Law; As if a man make a Leaſe for life; there is a Condition in Law annexed unto it, that if the Leſſee doth make a greater Eſtate, &c. that then the Leſſor may enter: & if this and the like Conditions in Law, which do give an Entry to the Leſſor, the Leſſor himſelf and his Heires ſhall not onely take benefit of it, but alſo his Aſſignes, and the Lord by Eſcheat, every one for the Condition in law broken in their own time. Litt. § 384. Co. lib. 236. b. 3.

Condition apportioned. 31 Since the making of the ſaid Statute of 32 H. the Grantee of part of the Reverſion ſhall not take advantage of the Condition, as if a Leaſe be made of three acres, reſerving a Rent upon Condition, &c. and the Reverſion is granted of two acres, the Rent ſhall be apportioned by the act of the Parties, but the Condition is deſtroyed, for that it is in the nature of a Condition in Law: But by act in law a Condition may be apportioned, as if a leaſe for yeares be made of three acres, one in the Nature of Borough English, and the other at the Common Law, and the Leſſee having iſſue two Sonnes, dieth each of them ſhall enter for the Condition broken; for the Reverſion, Rent, and Common, are divided by act in Law: In the King Caſe alſo the Condition in ſuch Caſe ſhall not be deſtroyed, but ſhall ſtill remain in the King. Co. lib. 219. a. 1. *Dumpers* caſe. Co. 4. 119. 2. 4.

Condition impoſſible by act of God. 32 If Feoffment be made upon Condition, that the Feoffee ſhall give the land to the Feoffor and his Wife, to have and hold to them and the heires of their two Bodies, the Remainder to the right heirs. In this Caſe if the Feoffee die before any Feoffment made, then is the Condition broken, becauſe he made not the Eſtates, &c. within the time preſcribed by the law; for when no time is limited for the doing of it, then the Feoffee at his peril may perform the Condition during his life (although there be no requeſt made) or elſe the Feoffor or his heires may enter; but if the Feoffment be made upon Condition, that the Feoffee before the Feaſt of S. Michael, next coming ſhall give the Land to the Feoffor and his Wife in tail, ut ſupra, and before the day the Feoffee dieth, the Eſtate of the Heir of the Feoffee ſhall be abſolute, becauſe a certaine time is limited by the mutuall agreement of the parties, within which time the Condition becometh impoſſible by the Act of God: And therefore it is neceſſary in ſuch Caſe when a day is limited, to adde to the Condition, that the Feoffee or his Heires ſhall perform the Condition. Co. lib. 219. a. 1. Litt. § 352.

Mortgage dies before the day. 33 If a man mortgage his Land to another, upon Condition that if the Mortgagor, and I. S. pay 20 s. at ſuch a day to the Mortgagee, that then he ſhall re-enter; Here, if the Mortgagor being in full life, will not pay the Money, but refuſe to pay it, and I. S. alone tenders it, the Mortgagee may refuſe it: But if the Mortgagor die before the day, and I. S. pays the Money to the Mortgagee, this is a good performance of the Condition, and yet the Letter of the Condition is not performed; but becauſe the Mortgagor dies by the Act of God, that ſhall not diſable I. S. to pay the Money; ſo alſo if I. S. had alſo before the day, the Mortgagor might have paid it. Co. lib. 219. b. 3

Leaving of a deed to prove Condition. 34 Regularly, a man by Deed ſhall not defeat an Eſtate of Freetenement, by force of a Condition, unleſſe he produce the proof of the Condition in writing, &c. yet if a Guardian in Chivalry in the Right of Litt. § 365. Co. lib. 225. b. 4.

of the heir enter for a Condition broken, he ſhall plead the State upon Condition without ſhewing of any Deed, becauſe his Intereſt is created by the Law: So it is alſo of a Tenant by Statute Merchant or Staple, or Tenant by Elegit: Likewiſe Tenant in Dower ſhall plead a Condition, &c. without ſhewing of the Deed, and the Reaſon of theſe Caſes and the like is, for that the Lord doth create theſe Eſtates, and they come not in by him, that was to enter for the Condition broken, ſo as they might provide for the ſhewing of the Deed, but they come into the Land by Authority of Law, and therefore the Law will allow them to plead the Condition without ſhewing of it, yet the Lord by Eſcheat (albeit his Eſtate be alſo created by Law) ſhall not plead a Condition to defeat a Free-hold without ſhewing of it, but this is becauſe it is conceived the Deed belongs to him; neither yet ſhall a Tenant by the Courteſie plead a Condition made by his Wife, and a re-entry for a Condition broken, without ſhewing the Deed; for albeit his Eſtate is alſo created by Law, yet becauſe the Law preſumes that he has the Poſſeſſion of the Deeds and Evidences belonging to his Wife, it will not allow him that Priviledge. Vide infra Ru. 56.

In Doctor *Leyfields* Caſe, *in fine.* Co. l. 10. 94. b.

Co. ib. 264. b. 4. 35. There is a diverſity between a Releaſe in Deed, and a Releaſe in law; for if the Heir of the Diſſeiſor make a leaſe for life, and the Diſſeiſee releaſe his Right to the leſſee for his life, his Right is gone for ever: but if the Diſſeiſee doth diſſeiſe the Heir of the Diſſeiſor, and make him a leaſe for life, by this Releaſe in law the Right is releaſed, but during the life of the leſſee: for a Releaſe in law ſhall be expounded more favourably, (according to the intent and meaning of the parties) then a Releaſe in Deed, which is the act of the party, and ſhall be taken moſt ſtrongly againſt himſelfe. A Releaſe in Deed, and in Law.

Co. ib. 266. a. 2, &c. 36 Rights are diſtinguiſhed by three kinds, Jus proprietatis, Jus poſſeſſionis, and Jus proprietatis & poſſeſſionis, alias, Jus duplicatum, or droit, droit: For example, if a man be diſſeiſed of an acre of land, the Diſſeiſee hath Jus proprietatis, the Diſſeiſor Jus poſſeſſionis, and if the Diſſeiſee releaſe to the Diſſeiſor then hath he Jus proprietatis & poſſeſſionis: Now regularly it holdeth true, that when a naked right to land is releaſed to one that hath Jus poſſeſſionis, and another by a mean Title recover the land from him, the Right of Poſſeſſion ſhall draw the naked Right with it, and ſhall not leave a Right in him, to whom the Releaſe is made; So the Heir of the Diſſeiſor being in by Diſcent, A. doth diſſeiſe him, and the Diſſeiſee releaſeth to A. now hath the meer Right of the land; but if the Heir of the Diſſeiſor enter into the land, and regaine the Poſſeſſion, that ſhall draw with it A the meer Right to the land, and ſhall not regaine the Poſſeſſion onely, and leave the meer Right in A. but by the continuance of the Poſſeſſion, the meer Right is therewith veſted in the Heir of the Diſſeiſor; And the Reaſon of this is, becauſe the Right is conveyed by Releaſe, which is the act of Party: but when the meer Right is ſubſequent, and transferred by act in law; there albeit the Poſſeſſion be re-continued, yet that ſhall not draw the naked Right with it, but ſhall leave it in him: As if the Heir of the Diſſeiſor be diſſeiſed, and the Diſſeiſor enfeoffe the Heir apparent of the Diſſeiſee being of full age, & then the Diſſeiſee dieth, & the naked right diſcends to his Heir, and the Heir of the Diſſeiſor recovers the land againſt him, yet doth he leave the naked right in the heir of the Diſſeiſee: So if the Diſcontinuee of Tenant in Tail enfeoffe the iſſue in Tail of full age, and Tenant in Tail die, and then the Diſcontinuee recovers the Land againſt him, yet he leaveth the naked right in the iſſue. Right diſtinguiſhed. Right croſſeth & contr.

37 If

leleale of light.

37 If the heire of the Diſſeiſor be diſſeiſed, and the diſſeiſée releaſe to the Diſſeiſor upon Condition, if the Condition be broken, it ſhall revert the naked right: So likewiſe if the Diſſeiſée had entred upon the heire of the Diſſeiſor, and made a feofment in fee upon Condition, if he entred for the Condition broken, and the heire of the Diſſeiſor entred upon him, the naked right ſhould be left in the Diſſeiſée: but in theſe Caſes, if the heire of the Diſſeiſor had entred before the Condition broken, then the right of the Diſſeiſée had been gone for ever, becauſe the right (in theſe caſes) was conveyed by releaſe and feofment, which are Acts of the party, it had been otherwiſe, if they had been transferred by Acts of Law, as in the Caſes put before in the example laſt afore-going. Co. lib. 266. a

leaſe of ndition.

38 There is a diverſity between a Right, which is favoured in law, and a Condition created by the party, which is odious in Law, for that it defeateth Eſtates, and therefore a right may be releaſed upon Condition, and if the Condition be broken, the Right ſhall revert: but if a Condition be releaſed upon Condition, the releaſe is good, but the Condition void. Co. lib. 274. b. 1. Litt. §. 467.

leaſe of a-ſion.

39 In a mixt Action a releaſe of all Actions real is a good barre, and ſo is a releaſe of all Actions perſonal; for a man by his owne act cannot alter the nature of his action; and therefore if the Leſſée for life or Leſſée for yeares do waſte, now is an Action of waſt given to the Leſſor, wherein he ſhall recover two things, viz. the place waſted, and treble damages: and in this Caſe, if the Leſſor releaſe all Actions Real, he ſhall not have an action of waſte in the perſonalty onely; Alſo if he releaſe all Actions Perſonal, he ſhall not have an action of waſte in the realty onely: and ſo it is alſo, where the Leſſée doth waſte, and after ſurrendreth to the Leſſor his Eſtate, and the Leſſor accept thereof, here alſo the Leſſor ſhall not have an action of waſt: howbeit, by act in Law the nature of the action may be changed, as if a man make leaſe pur terme d'auter vie, and the Leſſée doth waſte, and then Ceſtuy que vie dieth, In this Caſe an action of waſte ſhall lie for damages onely, becauſe the other is determined by act in Law; So likewiſe if an action of waſt be brought againſt Tenant pur auter vie, and hanging the writ Ceſtuy que vie dieth, the writ ſhall not abate but the Plaintife ſhall recover damages onely, becauſe if Ceſtuy que vie had died before any action brought, the Leſſor might have had an action of waſte for the damages, as afore-ſaid. Co. lib. 285. a. 2. Litt. §. 492.

re-ſecke.

40 A Grant of a Rent-ſecke without attornment is not good: for the grantée cannot diſtraine for it without attornment, or ſeiſin otherwiſe, becauſe it is conveyed by the ſingle act of the parties: But if there be Lord, Peine and Tenant, and the Peine grant over his meſnaltie by deed, the Lord releaſeth to the Tenant, whereby the meſnalty is extinct by act in Law, in this Caſe, if there be a Rent by ſurpluſage, it is now changed into a Rent-ſecke, and albeit there be no expreſſe attornment for it, as a Rent-ſecke, and that the quality of that part of the Rent is altered from a rent-ſervice to a rent-ſecke: yet becauſe it is altered by act in Law, the attornment to the grant of the meſnalty is a good attornment for that Rent-ſecke by ſurpluſage. Vid. ſup. 17. Co. lib. 209. b. 3

le.

41 If an houſe fall by tempeſt, or other act of God, the leſſee for life or yeares hath ſpecial Intereſt to take the great Timber, to build the houſe again, if he will, for his habitation: but if the leſſée pull down the houſe, the leſſor may take the great Timber, as a thing, which was parcel of his Inheritance, and in which the intereſt of the leſſée is determined (as in Caſe of trees and for the ſame reaſon) and yet he may have an action of waſte, and recover treble damages. Co. l. 4. 63. a. 4 *Herlakenden's* Caſe.

Co. lib. 5. 5. in the Lord *Mortwyes* Ca.

42 If Tenant in taile be reſtrained by Statute to demiſe his Eſtate otherwiſe then by reſerving thereupon verum & antiquum redditum, and the Eſtate being a Manno^r conſiſting of Free-rents, Copi-rents, and Leaſe-rents, he demiſeth the whole Manno^r reſerving a rent amounting to the ſumme of all thoſe rents, whereas the demeſnes onely were formerly demiſed reſerving rent: o^r if his Eſtate were two Farmes anciently let, viz. one at 20 l. per an. and the other of 10 l. per an. and he demiſeth them both together by one Indenture, reſerving 30 l. per an. In theſe and the like Caſes, ſuch demiſes will onely hold farme during the life of the Tenant in taile, and after his death his iſſue ſhall avoid them: for here the true and ancient rent is not reſerved, and being thus altered by the act of the party, they ſhall not bind the iſſue in taile: But if there be two Coparceners ſeiſed of land in tail, which was formerly let at 10 l. per an. one of them may demiſe her part o^r moity at 5 l. per an. and it ſhall bind her iſſue; ſo likewiſe if a Manno^r hath been always demiſed at 10 l. per an. and after a tenancy, eſcheats, yet it may be ſtill demiſed at 10 l. per an. and yet it may be ſaid, that now the 10 l. per an. is not verus & antiquus redditus, for no rent was ever yet reſerved out of the land eſcheated: But theſe two laſt Caſes differ from the former, in as much as Coparceners, and the Lord by eſcheate are in by act of Law and of God, which ſhall not prejudice any: But if the Lord had purchaſed the tenancy, it had been otherwiſe, for then he had been in by his owne Act, and not by Act of Law.

Demiſe by Tenant in taile.

Co. lib. 5. 22. *Langbeers* ca.

43 When the Condition of an Obligation conſiſts of two parts in the diſjunctive, and both are poſſible at the time of the Obligation made, and after one of them becomes impoſſible by the Act of God, the obligo^r is not bound to perfo^rm either part: As if A. be bound to B. upon Condition, that if A. marry I. and together which I. do ſell the lands of I. if then A. do purchaſe to I. and her heires ſo much land, as the money received for the other land ſold amounts unto, o^r elſe ſhall leave her worth ſo much at his death, that then, &c. In this Caſe, albeit A. marry I. and they ſolne in the ſale of her land, yet if A. ſurvive I. it is made impoſſible by the Act of God to perfo^rm the firſt part of the diſjunctive condition, viz. to convey land unto her, and therefo^re he is alſo diſcharged of the laſt part alſo.

Conditio diſjunctive.

Co. l. 5. 85. Sir *Henry Knivets* Caſe.

44 Tenant fo^r life lets fo^r yeares, the Tenant ſowes the land, and before the graine is ripe Tenant fo^r life dies, here the intereſt of the graine is in the Leſſee fo^r yeares, who may lawfully enter and take it, when it is ripe: for the Tenant fo^r lifes dieth is by act of God, which ſhall prejudice none: So if there be Tenant fo^r life remainder in Fee, the Tenant fo^r life demiſeth fo^r yeares, the Tenant fo^r yeares is ouſted, and the Tenant fo^r life diſſeiſed, the Diſſeiſo^r lets fo^r yeares, the diſſeiſo^rs Tenant ſowes the land, Tenant fo^r life dies before the graine is ripe, he in the remainder enters, the Leſſee of the diſſeiſo^r enters upon him, he in remainder brings an Action of Treſpaſs: In this Caſe, he in remainder may juſtifie his entry, but hath no right in the graine: alſo the diſſeiſo^rs leſſee may juſtifie the taking of the graine, becauſe of his poſſeſſion, but the meere right of the graine is in the leſſee of the Tenant fo^r life, and he ſhall recover in Treſpaſs againſt the diſſeiſo^rs leſſee damages fo^r the graine.

Land ſowed.

Co. l. 1, & 2. in *Bruertons* Ca. See more of this learning in *Talbots* Caſe Co. l. 8. 105. & in *Leyfields* Caſe, Co. l. 10. 107, & 108.

45 If one holdeth land of his Lord by the yearly ſervice of a Spurre, Hoſe, o^r the like, and the Lord purchaſe parcel of the tenancy, ſuch intire ſervices are gone, becauſe ſuch ſervice cannot be ſeverally o^r apportioned, and he hath diſcharged part thereof by his owne Act: So it is alſo when the original Act is the Act of the Party, mixt with an Act

Intire ſervices

Act of Law, as by recovery in a Ceſſavit of parcel of the tenancy all the intire ſervices are gone; But if parcel deſcend to the Lord, where the tenure is by a ſpurre, horſe, or the like, there it is otherwiſe; becauſe that comes to him ſingly by Act in Law: Howbeit, when ſuch ſervice is to be performed by Coperceuers, where (by the Statute of Malbridge c. 9.) one is to do the ſervice, and the reſt are to contribute (the ſame Law being alſo of their tenures by equity) there if any part come to the Lord either by Act of the party or of Law, yet the whole ſervice is gone, for there contribution failes, and the Law will rather ſuffer things againſt the principles of the Lord, then a man ſhall be without remedy, according to Rule 144.

erance of anor.; 46 If there be grant and render by fine of the demeſnes of a Manor, here albeit this be done in an inſtant, ſo as there was no tranſmutation of any poſſeſſion, yet the demeſnes being once by Act of the party abſolutely ſevered in the fee-ſimple from the ſervices of the Manor, the Manor is deſtroyed for ever: So likewiſe if a man hath a Manor and he grants part of the demeſnes and part of the ſervices to another he ſhall not have a Manor, for a man by his owne Act cannot create a Manor at this day: But if there be two Coperceuers of a Manor, and upon partition the demeſnes are allotted to one, and the ſervices to another, here albeit in this Caſe there is an abſolute ſeverance, yet if one of them die without iſſue, and the demeſnes deſcend to her, that hath the ſervices, the Manor is again revived; becauſe upon the partition they were in by Act in Law, and the demeſnes and ſervices were again reviced by the Act in Law: So alſo if upon the partition an advowſon appendant be allotted to one, and the Manor, unto which it is appendant, be allotted to the other, and after one of them dies without iſſue, whereby the Law unites them again, in this Caſe, the advowſon which was once ſevered, ſhall be again appendant to the Manor: Alſo if two Coperceuers have a Manor, and upon the partition each hath parcel of the demeſnes, and parcel of the ſervices: here, becauſe each of them is in by Act of Law, each of them hath a Manor. Co. l. 6. 64. a. in Sir *Moyle Finches* Caſe.

Office not aſſable for rs. 47 The Office of Marſhal of the Kings Bench cannot be granted for terme of yeares, becauſe being then a Chattel and an Office of truſt, by the death of the Leſſee it may happen to fall into the hands of ſuch perſons as are not fit to be truſted with that place: but yet, by Act of Law, a term (which is but a Chattel) may be in ſuch an Office, as appeares in 5 E. 4. 3. for the Duke of Norfolke had an Eſtate taile in an Office holden of the King in Capite, and dies, his heire within age and it was found by Office: In this Caſe the King had a Chattel in that Office, viz. during the minority, and in that Caſe if the King dies it ſhall deſcend to the next King, and ſhall not go to his Executors or Adminiſtrators, for an Act in Law ſhall not introduce any inconvenience: And the King having ſuch an Office during the minority; it ſeemes he cannot grant it for life, or yeares, or during the minority; becauſe that may prove inconvenient for the reaſons above alleaged; but at will he may grant it, for that is no certaine Eſtate. Co. l. 9. 95. a. in Sir *Geo. Reynolds* Caſe.

eigniory, ſuſpended. 48 By the Act of the party (whether right or wrong) all a Seigniory, &c. may be ſuſpended: And therefore if the Lord or Leſſor diſſeiſe or out the Tenant or Leſſee of any part, all is ſuſpended: alſo if a Commoner take a Leaſe of any part of the land, in which, &c. all the Common is ſuſpended: But by Act of Law a Seigniory may be ſuſpended in part and in eſſe for the other part: So if a Lord ſeiſe the Wardſhip of the Land of his Tenant by Co. lib. 9. 135. a. 3. in *Aſcoughs* Caſe.

Knight-service, join in the Seigniory assumed, but if the guardian endow the Feme of the Tenant of a third part of the Tenancy, now is the third part of the Seigniory revived, and the Tenant in power shall be attendant upon the guardian for the third part of the service, because Tenant in power is in by Act of Law: and for the same reason, if a man seised of lands in fee takes Feme, and enfeoffes another, the feoffee grants a rent-charge to the Baron and Feme and to the heirs of the Baron, the Baron dies, the Feme is endowed of a third part of the land out of which the rent issuing, in this Case the third part of the rent, which the Feme hath for life, is extinct, and two parts of the rent remaines to her, issuing out of the other two parts of the land: for although it be a rent-charge, which regularly cannot be apportioned, yet by Act in Law it shall be apportioned: so likewise if the Guardian in Knight-service seise the land of one coheirs within age, the other being of full age, there the Seigniory is suspended for a moity, and in esse for the other moity: And if there be two Copercenors of a Seigniory, and the one disseise the land Tenant, or comes to the land by peaceable title, the other may distraine her for her moity of the Seigniory: because these also come in by Act of Law.

Co. l. 10. 94. b. 3. Doctor *Leyfeilds* Case.

49 When the Interest of a thing is gained by Act of the party, in defence of the title thereof the party interessed must produce to the Court the Deed, by which he claimes: So in Trespas, the Defendant pleads the Queenes grant of the Rectory of O. to A. but shewes not the Letters Patents, this is error, because this Estate being gained by the Act of the party, he might in time have provided for his defence: but when a particular Estate or interest is created by Law, the party interessed shall not be forced to shew forth the Deed: So guardian in Chivalry, or Tenant in power may plead a release without shewing it: There is the same Law also of Tenant by Statute, Marchant, Staple, Elegit, &c. because they also come to the possession by execution of Law, and against the will of the tenant-tenant, who hath the deed, for Judicium redditur in invitum.

Shewing forth of a deed.

Co. l. 10. 104. b. 3. in *Alfridus Disbrowdes* Case.

50 A Tales ought not to be granted after a full Jury appeares and is sworne, and yet if a Jury be charged, and after and before Verdict given in Court one of them is taken away by death, which in the Act of God, in that Case a Tales shall be awarded, and no nisi prius tarries, and with this accords 12 H. 4. 10. so likewise if any of the Jurors impannelled die before they appeare, and that appeares by the Sheriffs return, the Panell shall not abate, (but if need be) a Tales shall be awarded, Vide 20 E. 4. 11.

A Tales granted.

F.N.B. 31. m.

51 If a man usurpe upon an Infant and present, which Infant hath an Advowson by discent, and after the Incumbent dies, the Infant shall present, and if he be disturbed, he shall have an Assise de darreine presentment: But if the Infant purchase the Advowson and present, and after the Church is void, and a Stranger presents and usurpes upon the Infant, and after the Incumbent dies, in this Case the Infant shall not have an Assis of darreine presentment, but shall be put to his writ of right: because in the first Case he is in by Act in Law, viz. discent, but in the last Case by act of the party.

Usurpation upon an Infant.

F.N.B. 34. k.

52 If a Feme purchase an Advowson and takes Baron, and the Church is void, and a Stranger presents, and the Baron suffers this usurpation here by this usurpation the Feme shall be out of possession after the six moneths past, and shall be put to her writ of right of Advowson, if she had presented before: but if she had not presented before, barr without recovery: howbeit the Law is otherwise where the Feme hath the Advowson by discent or by course of inheritance, which is an Act in Law.

A Feme hath an Advowson

53 The

53 The Grantee of a Reverſion by Fine ſhall not have a Writ of Waſte againſt the Tenant, before the Tenant hath attorned, but if a Reverſion deſcent to the Lord, he ſhall have a Writ of Waſte againſt the Tenant without any Attornment: So if the Lord of a Villain claim a Reverſion, that the Villain hath, here alſo the Lord ſhall have a Writ of Waſte againſt the Tenant, if he make Waſte without Attornment: So alſo if the King grant a Reverſion by his Letters Patents, the Grantee ſhall have a Writ of Waſte without Attornment, becauſe the Grant being in by matter of Record, he is reputed in by act of Law: in like manner, if (before 32 Hen. 8.) Tenant ſeiſed of a Reverſion to one in Fee, the Deviſee ſhall have Writ of Waſte againſt the Tenant without Attornment: for before the ſaid Statute he was in by Cuſtom, confirmed by the Statute by Vſes of the ſame Statute, which are now in Deed. Fitz. N.B. 60. I

54 If Tenant for life be diſtrained by the Lord Paramount for Services, a Writ of Meſne doth not lye for him againſt him in remainder or reverſion, but againſt the Meſne, yet in this Caſe Tenant in Dower ſhall have a Writ of Meſne againſt the Reverſioner, becauſe ſhe comes to her Eſtate by Act of Law. Fitz. N.B. 136. g.

55 In real Writs original, if one be ſummoned and ſeiſed, and afterwards dies (which is the Act of God) this ſhall abate the Writ: but the taking of Barre or Entry into the Land, by the party, that is ſo ſummoned and ſeiſed, ſhall not abate the Writ, becauſe theſe are acts of the party, and the Writ by ſuch acts (where there is no ſummons or ſeiſure) becomes wholly abatable. Ge. Jac. 130, 134. b 2. in *Read & Redman's* Caſe.

56 A man cannot plead in any action, that the Eſtate was made in Fee, Fee-tail, or Life upon Condition, without ſhewing in the ſame Deed, or ſhewing a Writing under Seal, proving the ſame Condition: but if a Gentleman in Chivalry in the right of the Heir entreth for a Condition broken, he ſhall plead the Eſtate upon Condition, without ſhewing of any Deed; becauſe his Intereſt is directed by the Law: And ſo it is alſo of a Tenant by Statute Merchant, or Staple, or by Elegit. Likewiſe the Lord by Eſcheat, although his Eſtate be created by Law, ſhall not plead a Condition to veſt a Fee-ſimple, without ſhewing a Deed, becauſe the Deed doth belong unto him. Vide ſupra Ru. 34. Litt. §. 365. Co. Inſt. p. 1. 225. b. 4. Co. Litt. 215. a. b

57 Vide Max. 148. 21.

58 An Action of Debt for a rent reſerved upon a Leaſe for years is always grounded upon a Privity, and if the Privity fail, the Action alſo fails, and ſo it is adjudged in 18 Ed. 6. that if a man make a Leaſe for years, reſerving rent, albeit the Leſſee aſſigns over, or accepts the land, yet the Action of Debt lies for the Privity: But in 9 H. 6. a man makes a leaſe for years reſerving rent, & the Leſſor grants the reverſion to a ſtranger the grantee ſhall never have an action of debt for rent, becauſe he was not privy, but a ſtranger to the firſt Leaſe: Likewiſe when the Law makes a Privity it doth ſo too; as if a Leaſe be made to one for years reſerving rent, and the Leſſee makes his Executor, and dies, an action of Debt lies againſt the Executor for the rent, becauſe he is made Privy by the Law. Dyer 4 b. 3. 24 H. 8.

59 At the Common Law there could be no apportionment of rent, by the act of the party, but only by act of Law, for if the Tenant before the Statute of *Quia Emptores terrarum*, Anno 18. E. 1. had made a Feoffment in Fee of part of the Tenancy, the Lord might diſtrain for that part, for all the rent, but at the Common Law if a man had made a Leaſe for years of two acres of Land, & the one is Meadow English, Dyer ibid.

Knight-service, now is the Seigniory suspended, but if the guardian sue by the Feme of the Tenant of a third part of the Tenancy, now is the third part of the Seigniory revived, and the Tenant in power shall be attendant upon the guardian for the third part of the services, because Tenant in power is in by Act of Law: and for the same reason, if a man seised of lands in fee takes Feme, and enfeoffes another, the feoffee grants a rent-charge to the Baron and Feme and to the heirs of the Baron, the Baron dies, the Feme is endowed of a third part of the lands out of which the rent issuing, in this Case the third part of the rent, which the Feme hath for life, is extinct, and two parts of the rent remaines to her, issuing out of the other two parts of the land: for although it be a rent-charge, which regularly cannot be apportioned, yet by Act in Law it shall be apportioned: so likewise if the Guardian in Knight-service seise the land of one co-heirs within age, the other being of full age, there the Seigniory is suspended for a moity, and revive for the other moity: And if there be two Coparceners of a Seigniory, and the one disseise the land Tenant, or comes to the land by potestative title, the other may distraine her for her moity of the Seigniory: because these also come in by Act of Law.

Co. l. 10. 94. b. 3. Doctor *Leyfeilds* Case. Shewing forth of a deed.

49 When the Interest of a thing is gained by Act of the party, in defence of the title thereof the party interessed must produce to the Court the Deed, by which he claimes: So in Trespas, the Defendant pleads the Queens grant of the Rectory of O. to A. but shewes not the Letters Patents, this is error, because this Estate being gained by the Act of the party, he might in time have provided for his defence: but when a particular Estate or interest is created by Law, the party interessed shall not be forced to shew forth the Deed: So guardian in Chivalry, or Tenant in power may plead a release without shewing it: There is the same Law also of Tenant by Statute, Marchant, Staple, Elegit, &c. because they also come to the possession by execution of Law, and against the will of the cotenant, who hath the deed, for Judicium redditur in invitum.

Co. l. 10. 104. b. 3. in *Alfridus Dimbawdes* Case. A Tales granted.

50 A Tales ought not to be granted after a full Jury appeares and is sworne, and yet if a Jury be charged, and after and before Verdict given in Court one of them is taken away by death, which is the Act of God, in that Case a Tales shall be awarded, and ne molo venire facias, and with this accords 12 H. 4. 10. so likewise if any of the Jurors impannelled die before they appeare, and that appeares by the Sheriffs return, the Panell shall not awate, (but if need be) a Tales shall be awarded, Vide 20 E. 4. 11.

F.N.B. 31. m. Usurpation upon an Infant.

51 If a man usurpe upon an Infant and present, which Infant hath an Advowson by discent, and after the Incumbent dies, the Infant shall present, and if he be disturbed, he shall have an Assise de darreine presentment: But if the Infant purchase the Advowson and present, and after the Church is void, and a Stranger presents and usurpes upon the Infant, and after the Incumbent dies, in this Case the Infant shall not have an Assise of darreine presentment, but shall be put to his writ of right: because in the first Case he is in by Act in Law, viz. discent, but in the last Case by act of the party.

F.N.B. 34. I. A Feme in an Advow.

52 If a Feme purchase an Advowson and takes Baron, and the Church is void, and a Stranger presents, and the Baron suffers this usurpation here by this usurpation the Feme shall be out of possession after the six months past, and shall be put to her writ of right of Advowson, if the her presentee before; but if the her presentee before, she is without recovery: howbeit the Law is otherwise, where the Feme hath the Advowson by discent or by course of inheritance, which is an Act in Law.

53 The

nt good but ar-ment.

52 The Grantee of a Reverſion by Fine ſhall not have a Writ of Waſte againſt the Tenant, before the Tenant hath attorned, but if a Reverſion eſcheat to the Lord, he ſhall have a Writ of Waſte againſt the Tenant without any Attornment: So if the Lord of a Villain claim a Reverſion, that the Villain hath, here alſo the Lord ſhall have a Writ of Waſte againſt the Tenant, if he make Waſte without Attornment: So alſo if the King grant a Reverſion by his Letters-Patents, the Grantee ſhall have a Writ of Waſte without Attornment, becauſe the Grant being in by matter of Record, he is reſtrained in by act of Law: in like manner K. (before 27 Hen. 8. of Uſes,) a man ſeiſed of a Reverſion to one in Fee, the Donee ſhall have a Writ of Waſte againſt the Tenant without Attornment: for being the ſole Statute he was in by Cuſtom, anſwers the Statute by Uſes of the ſame Statute, which are now in Law. Fitz. N.B. 60. I

nk of ſne.

54 If Tenant for life be diſtrained by the Lord Paramount for Services, a Writ of Meſne doth not lye for him againſt him in remainder or reverſion, but againſt the Meſne, yet in this Caſe Tenant in Dower ſhall have a Writ of Meſne againſt the Reverſioner, becauſe ſhe comes to her Eſtate by Act of Law. Fitz. N.B. 136. g.

55 In real Writs original, if one be ſummoned and ſeiſed, and afterwards dies (which is the Act of God) this ſhall abate the Writ: but the taking of Baron or Entry into the Land, by the party, that is ſo ſummoned and ſeiſed, ſhall not abate the Writ, becauſe theſe are acts of the party, and the Writ by ſuch acts (where there is no ſummons or ſeiſin) becomes ſolely abatable. Co. Lit. 134. b 2. in *Read & Redmans* Caſe.

ution may nd reſtrain ming a nd.

56 A man cannot plead in any action, that the Eſtate was made in Fee, Fee-tail, or for life upon Condition, without pleading alſo the cauſe thereof, or ſhewing a Writ duly under Seal, proving the ſame Condition: but if a Guardian in Chivalry in the right of the Heir entreth for a Condition broken, he ſhall plead the Eſtate upon Condition, without ſhewing of any Deed; becauſe his Intereſt is created by the Law: And ſo it is alſo of a Tenant by Statute Merchant, or Staple, or by Elegit. Notwithſtanding the Lord by Eſcheat, although his Eſtate be created by Law, ſhall not plead a Condition to defeat a Fee-ſimple, without ſhewing a Deed, becauſe the Deed doth belong unto him. Vide ſupra Ru. 34. Litt. S. 365. Co. Inſt. p. 1. 225. b 4. Co. Litt. 238. a b

57 Vide Max. 148. 21.

k. ity.

58 An Action of Debt for a rent reſerved upon a Leaſe for years is grounded upon a Privity, and if the Privity fail, the Action alſo fails, and ſo it is adjudged in 18 Ed. 6. that if a man make a Leaſe for years, reſerving rent, albeit the Leſſee never enters, or occupies the land, yet the Action of Debt lyes for the rent by Privity. But in 9 H. 6. a man makes a leaſe for years reſerving rent, & the Leſſor grants the reverſion to a ſtranger the grantee ſhall never have an action of debt for rent, becauſe he was not privy, but a ſtranger to the firſt Leaſe: Howbeit, when the Lord makes a Privity it is otherwiſe, as if a Leaſe be made to one for years reſerving rent, and the Leſſee makes his Executor, and dies, the action of Debt lies againſt the Executor for the rent, becauſe he is made Privy by the Law. Dyer 4 b. 3. 24 H. 8.

ption-t of rent.

59 At the Common Law there could be no apportionment of rent, by the act of the party, but only by act of Law, for if the Tenant before the Statute of Quia Emptores terrarum, Anno 18 E. 1. had made a Feoffment in Fee of part of the Tenancy, the Lord might diſtrain for the rent, but of the Common Law if a man had made a Leaſe for years of two acres of Land, & the one in Weſtough Engliſh, Dyer ibid.

English, and the other in Gavelkind,) and had issue two Sonnes and dies; In this Case, this rent should be apportioned, because this rent discended to them by Course of Law. So if Lessee for years make a Feoffment of parcel of the Land leased, and the Lessor enter for the Forfeiture into that parcel; In this Case also the rent shall be apportioned, because this Title of Entry is given to the Lessor by the Law.

Dyer 246.68. 8 Eliz. So After the Teste of a Writ of Covenant, and the Dedimus potestatem, and the Conusance of a Fine taken of a Feme Sole, and before the day in Bank, to record and engrosse the Concord, the Feme takes Baron, yet it shall be received and engrossed at the Prayer of the feme sole; for she hath done all that in her lay to do; And such Fine shall bind the feme and her Heires, and also the Baron, as it seems, for the marriage of the feme was her own Act: It had been otherwise if in that mean time she had died, being the Act of God, for then the Writ of Covenant had abated. Fine of Feme Sole.

115 *Astuque fortior, est dispositio Legis, quam hominis.*

Co. Inst. p. 1 310. a. & 187 b. 2. 1 If a reversion be granted to a man and a woman, they are to have moities in law; but if they inter-marrie, and then attornment is had, they shall have no moities (and yet by the purport of the Grant they are to have moities,) because it is by Act in Law. Vide Pl. Co. 483. a. 1. Attornment Baron and Feme.

Co. ib. 310. a. 2. 2 If a reversion be granted for life, the remainder in tail, the remainder in fee, attornment to the Grantee for life shall enure to them in the remainders to vest the remainders in them: And in this Case, albeit the Tenant upon the Attornment should say, I do attorn to the Grantee for life, but that it shall not benefit any of them in remainder after his death, yet the Attornment is good to them all: for having attorned to the Tenant for life, the law (which he cannot controll) doth vest also all the remainders, according to the purport of the Grant. Attornment the particular estate vests remainders.

Co. lit. 321. a. 4 Litt. §. 589. 3 Regularly, the Grant of a Seigniory is not good without Attornment, yet if there be Lord, Mesne, and Tenant, and the Mesne grant by fine the Services of his Tenant to another in fee, and after the Grantee die without Heir, so as the Mesnalties comes to the Lord paramount, by way of Escheat, and after the Services of the Mesnalty are in arrear: In this Case, the Lord paramount may distraine the Tenant, albeit he never attorned; For the Seigniory being by Act in law, (by the Escheat) devolved in the Mesnalty; the Lord shall have as much benefit of the Mesnalty escheated, as he had of the Seigniory devolved, and the rather for that the law casteth it upon him, and he hath no remedy to compel the Tenant to attorn. Grant of a Seigniory good without Attornment.

Litt. §. 584. Co. ib. 321. b. also in *Mavlories* Case. Co. l. 113. a. 4 If the reversion of a Tenant for life be granted by fine to another in fee, and the Grantee (before attornment) die without Heir, so as thereby the reversion escheates to the Lord; if afterwards the Tenant make waste, the Lord shall have a Writ of waste against him, albeit he never attorned: And yet where men claimes by force of a Grant made by Fine, viz. as Heir, or as Assignee, &c. there he shall not distraine or avow, nor have an action of waste, without Attornment: And the reason of the former Case is, because the Lord is in by Escheat, which is a meer Act in Law: Howbeit, so it is also, when it is partly by Act in Law, and partly by the Act of the party, as if the Conusee of a Statute Merchant extendeth a Seigniory or rent, he shall distraine without any Attornment, because he is in by force of Grant of a Reversion without Attornment.

of the Statute: So alſo if a man make a Leaſe for life or yeares, and after levie a fine to A. to the uſe of B. and his heires, B. ſhall diſtraine and have an action of waſte, albeit the Conuſee never had any Attornment, becauſe the reuerſion is veſted in him by force of the Statute, and he hath no remedy to compel the Leſſe to attorn. There is the ſame Law alſo of a Bargaine and Sale by Deed indented and inrolled, for in that Caſe alſo the Bargainée is in by force of the Statute.

urrender in
w.

5 A Surrender in Law is in ſome Caſes of greater force, than a Surrender in Deed; As if a man make a Leaſe for yeares to begin at Michaelmas next, this future intereſt cannot be ſurrendred, becauſe there is no reuerſion, wherein it may be drowned; but by a Surrender in Law it may be drowned; As if the Leſſe before Michaelmas take a new Leaſe for yeares, either to begin preſently, or at Michaelmas, this is a Surrender in Law of the former Leaſe: Former & æquior eſt diſpoſitio legis, quàm hominis. Co.ib.338.a.2. in Sir *Moile Finches* Caſe. Co.l.6.96.b.3. And in the Church-wardens Caſe of S. *Saviour*. Co.l.10.67.b.

reſting an
ate out of
King.

6 A Gift in Tail is made to B. the remainder to C. in Fee, B. dies, continueth and taketh back an Eſtate in Tail, the remainder veſts in C. to the King by Deed inrolled, Tenant in Tail dies: In this Caſe, his iſſue is remitted, and (conſequently) the remainder: And the difference is betwixt an act in Law (for that may deveſt an Eſtate out of the King,) and a tortious Act or Entry, or a falſe or feigned Recovery againſt Tenant for life or in tail, which ſhall never deveſt any Eſtate, Remainder, or Reuerſion out of the King: But a Recovery by good Title againſt Tenant for life, or in Tail, where the Remainder is to the King by deſeaſible title, ſhall deveſt the Remainder out of the King, and reſtore and remit the right owners. Co.ib.354.b.3. Litt. §.673.

nt of a
ſentation.

7 If a man ſeiſed of an Advowſon in fee by his Deed granteth the next preſentation to A. and before the Church becometh void, by another Deed grants the next preſentation of the ſame Church to B. In this Caſe, the ſecond Grant is void; for A. had the ſame granted to him before, and the Grantée ſhall not have the ſecond advoidance by Conſtruction, viz. to have the next avoidance after it, which the Grantor might lawfully grant; For the Grant of the next avoidance cannot impeach the ſecond preſentation: But if a man ſeiſed of an Advowſon in fee take wife; now by act in Law is the wife entitled to the third preſentation, if the husband die before; In this Caſe if the husband grant the third preſentation to another, and then the husband die, the heir ſhall preſent twice, and the wife ſhall have the third preſentation, and then the Grantée the fourth; for the fourth preſentation ſhall in this Caſe be taken to be the third, which he might lawfully grant: And ſo note a diverſity betweene a Title by Act in Law, and by act of the party, for the act in law ſhall work no preiudice to the grantée. Co.ib.378.b.a.

rranty ex-
ſe, and in
y.

8 An expreſſe Warranty ſhall never binde the heires of him, that maketh the Warranty, unleſſe they be named: For example (Littleton ſaith) Ego & hæredes mei, but in Caſe of warranties in law in many Caſes the heires ſhall be bound to Warranty, albeit they be not named, as Tenant in Dower (who hath a Warranty in Law) being impleaded, ſhall vouch and recover in value a third part of the two parts, whereof ſhe is dowable, &c. Co.ib.384.b.3.

by will.

9 It is a Maxime in Law, that the heir ſhall never be bound to any expreſſe warranty, but where the Anceſtor was bound by the ſame warranty: And therefore if Tenant in tail alien his Land to his brother in fee, and hath iſſue, and die, and after his brother deviſe the ſame land to another in fee, and binde him and his heires to warranty, &c. and die without iſſue, this warranty ſhall not barre the iſ-

ſue Co.ib.386.a.1. Litt. §.734.

ſue in tail, becauſe this warranty did not diſcend to the iſſue in tail, in regard the uncle of the iſſue himſelf was not bound to the warranty in his life time, nor chargeable with it, ſo that the Deviſe takes not effect until after his death: Alſo if a man make a Feoffment in fee, and bind his heires to Warranty, this is void by the Warrant of this Maxime, as to the heir, becauſe the Anceſtor himſelf was not bound: In like manner, if a man bind his heires to pay a ſumme of money, this is void; And vice verſa, if a man bind himſelf to warranty, and bind not his heires, they are not bound: for he muſt ſay, Ego & hæredes mei warrantizandibimus: And Fleta ſaith, Nota, quod hæres non tenetur in Anglia ad debita anteceſſoris reddenda, niſi per anteceſſorem ad hoc fuerit obligatus, præterquam debita Regis tantum; A Fortiori, in Caſe of warranty, which is in the realty: Howbeit, the warranty in Law may bind the heir, although it never bound the anceſtor, and this alſo may be created by a laſt will and teſtament; As if a man deviſe lands to another for life, or in tail reſerving a rent, the Deviſee for life or in tail ſhall take advantage of this warranty in Law, albeit the anceſtor was not bound, and ſuch a Deviſe ſhall alſo bind his heires to warranty, albeit they are not named.

Co. l. 1. 83. b. *Corbets* Caſe. An Eſtate ceaſe to one and to ano- ther, upon

10. If a man covenant to ſtand ſeiſed to the uſe of himſelf for life, the remainder to A. in tail, the remainder to B. in tail, &c. Provided, that if any of the remainders in tail ſhall reſolve to alien, that then the Eſtate of him ſo reſolving ſhould ceaſe, as if he were naturally dead, and that it ſhould then go to him in the next remainder; here this Proviſo is void and againſt Law for the repugnancie; for by the words or act of the partie an Eſtate cannot be limited to ceaſe as to one, and from thence-forth to be in another: For if a man make a Leaſe for life, upon condition, that if he do not pay 20 l. ſuch a day, that another ſhall have the Land, this future limitation is void, alſo if a man make a feoffment in Fee of Land to the uſe of A. and his heires every Monday, and to the uſe of B. and his heires every Tueſday, and to the uſe of C. and his heires every Wedneſday, theſe limitations are void, and we find no ſuch fractions of Eſtates in the Law; And if Co-perceners agree to preſent by Turn, this is a partition as to the Poſſeſſion, yet nevertheleſſe they ſhall in a Writ of Right; ſo alſo partition, that one of them ſhall have the land from Eaſter to Lammas, and the other from Lammas to Eaſter, in ſeverally, this is good, as to the poſſeſſion and taking of the profits, but it is no ſeverance of the Eſtate of Inheritance: Howbeit, an act of Parliament or the Common Law may make an Eſtate void as to one, and good as to another, but a man by his words, any the breath of his mouth cannot do it: As if Land be given to Baron and feme, and the heires of their two bodies, and the Baron levie a fine with Proclamations, and hath iſſue and dies, now this fine by force of the Statute of 32 H. 8. 36. ſhall barre the iſſue in tail; but ſhall not bind the feme, and ſo in reſpect of one it is a good barre, and in reſpect of another no barre: Alſo in a Præcipe, if one be vouched, here as to the Demandant the Vouchee is Tenant, and a Releaſe to him by the Demandant is good, but as to a ſtranger he is not Tenant; and therefore a Releaſe to him by a ſtranger is void; in like manner if one hath a Term for years as Executor, and ſurrender it, here, in one reſpect the Term is extinct, but in another it is Aſſets: So that an act of Parliament or the Law may do that in ſuch Caſes, which a man by his words cannot do.

Ibid. 86. b. 4. & 87 a. 4. *per Walmeſley.*

Co. l. 4. 1. b. 3. in *Vernons* Caſe. Dower alſo ed.

11. No collateral ſatisfaction or recompence made to the Feme, (either before or after marriage) in lieu of her Dower was any barre of her

her dower at the common law before the Stat. of 27 H. 8. 10. albeit after the death of her husband she entred thereinto and accepted thereof in recompence of her dower, because by the marriage she being entitled to a freehold for life, that title shall not afterwards be barred by any collateral satisfaction: Howbeit, dower ad ostium Ecclesiæ, or ex assensu patris shall conclude her of her dower, if she enter into the lands so assigned after the death of her husband: for the law doth allow those; being made in such form, as the law requires those kinds of dower to be made: But in other case, where the dower is made by the Act of party, quære etc. And therefore if B. enfeoffes to the use of himself for life, remainder to his wife for life, upon condition to perform his last will and for her joynture; albeit after the death of her husband she accepts thereof, yet she is not bound by it.

The principal Case there.

12 If two joint-tenants (since the Stat. of 31 H. 8. 1. which gives them a writ of partitione faciendâ) do make a partition by deed without Covenant, albeit they are now compellable by that Statute to make partition, yet because they do not pursue the Stat. to make partition by the writ, such partition remains at the common law, and so (by consequent) the warranty originally annexed to their Estate is gone, but if they make partition by writ provided by the Stat. (to which every one being party, none can have any wrong by the operation thereof) the warranty shall remain notwithstanding such partition in severalty: because the first is by the act of the parties, but the other is operation of the Statute, which is an act in law, so also if there be two joint-tenants with warranty, and the one releases the other, and the releasee brings an Assise here, albeit the Plaintiff may have recovery in severalty, yet he shall recover generally, and in this Case also the warranty shall be preserved, because he recovers by course of Law, and with this agrees 28 lib. Ass. Pl. 3 5. and Sir Ellis Cule's Case ubi supra: albeit there be some Books, that he shall have Judgment to hold in severalty, as 10 E. 3. 40. & 10. Ass. Pl. 17.

Co. l. 6. 12. b. Morrices Case.

13 Where a deed is requisite to be had ex institutione juris, it ought to be shewed in Court, although it concerne a thing collateral, and transfers or confers nothing, as if the Mayor and Comminalty of London have an Estate for the life of I. S. if (in this Case) the Mayor and Comminalty attorn to the grantee of the reversion, the law requires, that it shall be by deed or, notwithstanding that the grantee comes not to by them that attorne, and that the attornment is but a bare conclusion; yet in pleading, the deed of Attornment ought to be shewed, for in such Case the deed is requisite ex constitutione Legis: but when a deed is only requisite ex provisione hominis, in such Case the provision of a man shall not change the judgement of the Law; as if a man make a lease for years of Land to A. upon condition, that he shall not assigne it over but by deed, and not by parol: in this Case ex provisione hominis the assignment ought to be by deed, yet because, ex constitutione legis, the deed is not necessary for the assignee, he may plead the assignment without shewing the deed.

C. l. 6. 38. b. 4. Bellamies Ca.

14 Portior & æquior est dispositio legis quàm hominis, and therefore he that hath a future interest cannot surrender it by any expresse surrender but by taking of a new lease (which is in Law and amount to a surrender in law) it may be surrendred and determined, as it behoves in 35. lib. 6. 68. vide supra cap. 5. fo. If the father be enfeoffed in Fee, and the feoffor warrant the land to him and his heires, here the assignee shall not vouch, but if the father enfeoffe his sonne and heire apparent with warranty and die, in this Case the heire (being in truth assignee) shall vouch: for the law, which hath determined the warranty of the father to the son, will give the son benefit of the first warranty, as it is resolved in 43 E. 3. 5. by which it appeareth, that the act in law is both preserving

Co. l. 6. 69. b. 3 in Sir Moile Finches Case.

The principal Case therein essest.

and unto agent, then the Act of the party ought to be, so also if A. Lease for 30 years rendring to B. but 20 pence and then the retenement after a time to B. and his heirs, who enfeoffes D. who outs B. and B. recouers upon D. here the entry of B. is a good attornment in Law and stronger then an expresse attornment.

Co.l.8.52 a.3 in *Pinnor* ca.

Authority revocable.

15 Albeit a man be bound to an Obligation to stand to, abide, &c. an Arbitrament; yet he may countermand it; For a man cannot by his owne Act make such an authority, power, or warrant, as shall not be countermandable, which by the Law also in its own nature is countermandable, as if I make a Letter of Attorney to make livery to one in Lands in my name, or if I assigne Auditors to take an account, or if I make mutuy Facta or submit to an Arbitrament, albeit these are made by expresse words irrevocable, or that I bind my self, that they shall stand irrevocable, yet they may be revoked; so if I make my last Will irrevocable, yet I may alter, revoke, or make it; so if my Lease conveyed after the Judgment of Law, notwithstanding that irrevocable, which of its owne nature is revocable.

Co.l.10.57.b.2 in the Church wardens of St. *Saviour* in *Southwarke* their Case.

Surrender in Law.

16 The Churchwardens of St. Saviour in South-warke having a House of the Rectory almost ruined, contracted with the Churchwardens then having care of the late Rectory, that they should pay 20 l. fine and therefore the old Letters Patents to the King and a confirmation of a new lease should be granted them; They paid the 20 l. fine, received from the Chancery the Letters Patents, and discharged the Clerk there, but did not take care that the Letters Patents were sealed; and yet the King was not named in his grant, but the Lease was granted by the Parishioners by the name of the Parishioners of St. Saviour in Southwarke, which was a meere nullity, for the Parishioners are a meere confused multitude, and cannot make a corporation aggregate of many, and could not make a lease by the name of Parishioners without Deed in writing under their Seals, yet they may by Act in Law surrender their term without any writing; for if the Prior without the consent of the Convent make a lease for years rendring Rent, if the Prior by deed expresse release the rent, and die, the Successor shall recover the arrearages, but if the Prior out the Lessee during his time, this discharges the rent that incurred during the Priors estate against the Successor. 44 E. 3. 21.

Co.l.10.80.b.4 in *Lewes Bowles* Case.

Tenant taile dies possibility, &c.

17 The Estate of a Tenant in Taile after possibility, &c. ought to be of a Remainder and reflexe of an Estate Taile, and this by the Act of God, and not by the limitation of the party, ex dispositione Legis, and not ex provisione hominis, and therefore if a man makes Estate in Taile upon Condition, that if he doth such an Act, that he shall then have it but for life, he is not Tenant in Taile after possibility, &c. for this is ex provisione hominis, and not ex dispositione Legis, but it ought to be the remainder and reflexe of an Estate Taile, and that by the Act of God and the Law, viz. by the death of one of the Donees without Issue. And therefore if Tenant in speciall taile be remitted in an Assise, and after one of them die without issue, and after the surviver the first purchases (who is Tenant in taile after possibility) his recontinuation, he shall have no affect for the remainder, which he had before, for it is parcel of the Estate taile. Vide sup. Case 4.

Co.l.8.152 a.2. *Edw. Abbots* Case.

Releases right.

18 If the Disseisee release all Actions to the heire of the Disseisor, thereby his right is gone in enjoyment of Law, for when a man hath not any other means to come by his Land, but only by Descent or Action, if he release all Actions, by such release his right is for ever in enjoyment of the same, because by his own Act he hath taken away the meanes of all manner and remedies to recover it, either the same or his right of the Disseisee, unto a Lease for life, the

the remainder in fee, and the diſſeiſee releaſe to the Tenant for life all actions, which he hath againſt him, and after Tenant for life dies, the diſſeiſee ſhall have an action, notwithſtanding ſuch releaſe, againſt him in remainder, for he did but releaſe the action, and the act in law, ſhall never extend the act of the party more largely, then his expreſſe words, as if the Lord diſſeiſe his Tenant, and make a leaſe for life, this releaſe in law ſhall not extend farther then for the life of the leſſee: for true it is, Fortior & potentior eſt diſpoſitio Legis, quàm hominis, and it is as true, Fortior & æquior eſt diſpoſitio Legis, quàm hominis.

Joint-tenants, Tenants in Common, Coparceners, Preſentation Advowſon.

19 A joint-tenant or Tenant in common ſhall not have a Quare Impedit for the advowſon which they have in jointure or in common; in Caſe one of them preſent alone againſt his companion, that ſo preſents: but if two Coparceners cannot agree in preſenting, the eldeſt ſiſter ſhall have the firſt preſentation, and ſo ſhall alſo he have, that hath her Eſtate and if either of them be diſturbed by the other Coparcener, either of them ſhall have a Quare Impedit againſt the other ſiſter, And Coparceners, and thoſe, who have their Eſtates ſhall preſent as Coparceners ought to do, viz. the eldeſt firſt, and then the ſecond, & after her the third, and ſo the reſt in order according to their ages: and the diverſity between joint-tenants or tenants in common, and Coparceners ariſeth from this ground, becauſe they are in by grant, which is the act of the party; but theſe are originally in by act in law. F.N.B. 34. E.

Abbot. Waſt.

20 If an Abbot make waſte in the Lands, which he hath in ward, and dies, the Succeſſor ſhall not be charged therewith, becauſe his death is the Act of God: it is otherwiſe, if he be depoſed, for there the Succeſſor ſhall be chargable with it, becauſe that is the Act of the party. F.N.B. 60. m.

Lord, Meſne, and Tenant. Attornment.

21 If there be Lord, Meſne, and Tenant, and the Lord grant by fine the ſervices of his Tenant to another in fee, here if the ſervices of the Meſne be arrears, the grantee ſhall not diſtraine the Tenant before attornment: Howbeit if the grantee die without heire, whereby the meſnalty eſcheats to the Lord Paramount: in that Caſe, if the ſervices of the Meſnalty be arreare, the Lord Paramount may diſtraine the Tenant without attornment: becauſe the grantee came to the meſnalty by the act of the party, but the Lord Paramount comes to it by Act in Law. Co. Inſt. p. 1. 221. b. 4. Litt. §. 583.

Entry in more advantageous, than an entry Deed.

22 An actual entry into land is meerely the Act of the party, and therefore is called an entry in deed, and albeit a claime be alſo an Act of the party, yet it is alſo mixt with force of Law, and therefore it is called an Entry in Law, and is not onely as forcible, as an Entry in Deed, but becauſe it is as well an Act of Law as of the party, it giveth the party a greater privilege, then an Entry in Deed doth; for a continual claime of the Diſſeiſee being an Entry in Law ſhall veſt the poſſeſſion and ſeiſin in him for his advantage, but never for his diſadvantage: and therefore if the Diſſeiſee bring an Aſſiſe, and hanging the Aſſiſe he make continual claime, this ſhall not abate the Aſſiſe, but he ſhall recover damages from the beginning: but it is otherwiſe of an Entry in Deed. Co. lib. 5. 53. b. 4.

gnee in

23 Upon a Leaſe for yeares by indenture, the Leſſee covenants and grants, that if he his Executors or Aſſignes alien, it ſhall be lawfull for the Leſſor to re-enter, and after he makes his Wife Executrix and dies, the Feme takes a new husband, who aliens: In this Caſe ſome hold there is no breach of the Condition, becauſe the Baron is in by the Law and not Aſſignee of the Leſſee, as it is of Tenant by the Courteſie, or Lord of a Villein: but others hold the contrary, ideo quære. Dier 6. 28 H. 8. 1. &c.

Dier 41. 3. 31 H. 8. Deviſe of a Leaſe.

24 A leaſe is made for term of years; upon Condition that if the Leſſee alienating his Eſtate aſſigne the term to any other without the Aſſent of the Leſſor, that then the Leſſor may reenter, and the Leſſee deviſeth it by his will to another without Aſſent, &c. And (by Brooke and Hales) this is no forfeiture, becauſe the Deviſee ſhall be ſaid to be in by the aſſignement, that the Deviſor made during his life, but if the Executors had enjoyed the term, that had been no forfeiture, becauſe in that Caſe the Law makes the aſſignement. Tamen quære.

Co. Inſt. p. 1. 310. b. 3. Attornment.

25 If a reverſion of land be granted to an Alien by deed, and before attornment the Alien is made denizen, and then the attornment is made: In this Caſe the King upon office found ſhall have the land; for as to the Eſtate between the parties it paſſeth by deed ab initio, it is otherwiſe, where land is granted to a man and a woman, and they intermarie, and then attornment is had, for which Vide ſupra Pl. 1.

Dier 60. 22, 23 36 H. 8. Seiſure of a villein.

26 Where is a diverſity, where the body of a man in execution is ſet at liberty by authority of Law, and when without authority, as by the voluntary eſcape in a Sheriffe, or the like; For the Law favors all rights: as in Caſe of a Villein, to whom the Kings preſence is a ſanctuary, where the Lord cannot ſeiſe him, howbeit afterwards out of his preſence he may, becauſe the Law gives the Villein that privilege pro tempore, but if the Lord himſelfe enfranchiſe him by manumiſſion (in deſcant in Law) for ever, he is free for ever in favorem libertatis, becauſe that is the Act of the Lord himſelfe: So if a man be taken in execution and be ſuffered to eſcape by the Sheriffe, this is an abſolute diſcharge of the debt, and the Plaintiffe is to have his remedy againſt the Sheriffe by action of debt: But if a Member of Parliament be arreſted by a Sheriffe upon an execution, and he afterwards freed by the priviledge, which the law gives him, that is no diſcharge of the debt, but that when he ceaſeth to be a Member, he may be arreſted again upon the ſame judgement, &c. Arreſt of a Member of Parliament.

Dier 68. 24. in Kidwelleys Caſe. 4, 5 E. 6. Demand of Rent.

27 Where a demand of Rent is to be made by the law (as when no place is aſſigned for the payment thereof, the law intends the place) there it is not ſufficient for the party to come to the land and ſay nothing, but he ought to bring witneſſes with him, and in theſe preſence ought to make an expreſſe demand of the Rent upon the land (as in ſuch caſe I have ſaid no demand ſuch a Rent, or the like) albeit none be there prudent to pay the Rent: But when the Rent is by the agreement of the parties paſſed out of the land, the Leſſor is not bound to demand it, but the Leſſee is to ſeek out his perſon.

Dier 140. Pl. 39. 3, 4 P. M. A perſonal thing exiſt by husband.

28 Nothing of action perſonal being once in eſtate (though it be but for an houre) is extinct and gone for ever, when it is by the act and conſent of the party himſelfe, who hath intereſt in it: But when it is by the Act of Law, it is otherwiſe, as the Caſe is in 6 E. 4. where a man convicted in a rediſſeiſin was impriſoned for outlawry after, and after pardoned, here the execution of the body was, for the time that he was the Kings priſoner, ſuſpended, but after pardon it was revived.

116. It repueth that a man will deal for their own best advantage.

1 Upon this ground it is, that a party cannot be Witnesse in his own Cause, for the Law presumeth he will speak for his own most advantage; And therefore neither shall the party to an usurious Contract be admitted to be a Witnesse against the Usurer, for in effect he should be Testis in propria causa, and should avoid his own Words and Assurances, and discharge himself of the Money borrowed, and albeit he seemingly take up an Information to exhibit the Information, Mr in rei veritate he is the party: And herewith in effect agreeth Britton, that he that challengeth a right in the thing in demand, cannot be a Witnesse, for that he is a party in interest, and will advantage himself as much as he can. Co. Inst. p. 1. 6. b. 4. In Smiths Case 8 Jac. Brit. 134.

2 If an Infant exchanges Lands, and after his full age occupie the Lands taken in exchange, the exchange is become perfect, for the exchange at first was not void, because it amounted to a Livery, and also in respect of the recompense, but voidable. Co. ib. 51. b. 3.

3 A Writ of Entry ad terminum qui præterit, lieth against the Tenant at sufferance, that holdeth over his term; but this is rather by admission of the Demandant than for any estate of Free-hold, that is in him; for in judgment of Law he hath but a bare Possession; So if Tenant pur terme de auter vie continue in Possession after the decease of Cesty que vie, or Tenant for years holdeth over his term, in this Case the Lessor cannot have an action of Trespasse before Entry; but he may have a Writ of Entry, if he will thereby admit himself to have a Free-hold; And the Law suffers him so to do, because the Law presumes that he will not so admit himself without some hope of advantage, that may redound to himself thereby. Co. ib. 57. b. 3.

4 A Tenant holdeth of his Lord certaine Lands in Socage to pay yearly 2 pairs of gilt Sparres or 12 shillings in Money at the Feast of Easter, in this Case, the Rent is uncertaine; and the Tenant may pay which of them he will at that Feast, and may also pay which of them he will for Reliefe, but if he pay it not when he ought; then may the Lord also distreine for which he will: And therefore in such Case if the heir be not presently (that is, or presently after as conveniently as he may, all due circumstances considered,) after the death of his Ancestor, ready upon the Land to pay Reliefe, the Lord may distreine for which of them he will, and if the Tenant tender either of them according to the Law, and come for the Lord but there ready to receive it, yet the Lord may distreine for that which was tendred, at his pleasure. For in all such Cases the Law supposeth, that a man will deale for his own best advantage. Co. ib. 90. b. 4. Co. ib. 91. a. 4.

5 Upon a Reservation of a Rent upon a Feoffment in fee by Deed indented, the Feoffor shall not have a Writ of Annuity, because the the words of Reservation, as reddendo, solvendo, faciendo, tenendo, reservando, &c. are the words of the Feoffor, and not of the Feoffee; yet if afterwards the Feoffee accept of the Estate, he is thereby bound, and is subject to a Writ of Annuity. Co. ib. 144. 1. 2

6 Upon this ground also it is, that all full Challenges, both to the Array, and to the Pole, are allowed in Law; for which see the quotation in the margent. Co. ib. 156. a. & 157. &c.

7 Where Lands are given in Frank-marriage, and other lands discend to the other Sister in Fee-simple, if the Donees will not do the Co. ib. 776. a. 4 &c. Litt. §. 269

the firſt act, viz. put their Land in Hotchpot, the Law preſumes they are ſatisfied, and therefore (in ſuch Caſe) allowes them no part of the Fee-ſimple Land deſcended by Writ of partition or otherwiſe, becauſe non tenent inſimula & per indiviſo.

Co.lib.302.b.2. 8 If Tenant in tail makes a Feoffment in fee upon Condition, and dieth, and the iſſue in tail within age doth enter for the Condition broken; in this Caſe, he ſhall be firſt in, as Tenant in Fee-ſimple, as heir to his father, and (conſequently) ſhall be inſtantly remitted: but if the heir be of full age, he ſhall not be remitted, becauſe he might have had his Formedon againſt the feoffee, and the Entry for the Condition is his own Act. Diſcent. Entry. Remitter.

Co.lib.208.b.4. 9 When an Obligation or Feoffment in Fee is made upon Condition, that the feoffor, feoffee, obligor, or a ſtranger ſhall do a Sole Act or Labour, as to go to Rome, Jeruſalem, &c. In ſuch or the like Caſes, the feoffor, feoffee, obligor, or ſtranger have time during their lives to do it, and cannot be haſtened by requeſt; for in ſuch Caſes the Law gives them credit, that they will take the moſt convenient time for the doing thereof. Feoffment. Obligation. Condition. Act.

Co.lib.288.b.3. 10 If in a perſonal action the Defendant be *Quinto exactus*, upon the Exigent, and maketh default, the judgment is Ideo utlagetur, per Judicium Coronatorum, or (in London) per Judicium Recordatoris; And then upon the Return of the Exigent he is out-lawed: Howbeit, in this Caſe the Plaintiff recovers nothing, but the King taketh the whole benefit thereof, which is the forfeiture of all his Goods; for the Law intends, that the Defendant will rather appear and anſwer the Plaintiff, &c, than to forfeit all his Goods and Chattels, Debts, and Duties to the King, by his default and contumacy. Utlawry. Forfeiture.

Co.lib.303.b.1. 11 The Plea of every man ſhall be conſtrued ſtrongly againſt him that pleadeth it, for every man is preſumed to make the beſt of his own Caſe. Plea.

Co.l.2.35.b.3. in Sir *Rowland Heywards* Caſe. 12 Upon this ground alſo it is, that when two things are offered to be taken, it is in the Election of him that hath intereſt or power in them, to take which of them he pleaſeth; So if A. ſeiſed of a Manor, part in Demeſne, part in Service, demiſeth, bargaines, and ſells the Manor to W. here it is in the Election of W. to take it either by Demiſe at the Common Law, or by Bargaine and Sale according to the Statute. Election.

Co.l.3.24.b.2. in *Walkers* Caſe. 13 It was ſaid, that if the Leſſee aſſign over his term, the Leſſor may charge the Leſſee or his Aſſignee at his Election, but if the Leſſor accept the Rent of the Aſſignee, he hath determined his Election, and ſhall not have an action againſt the Leſſee afterwards for Rent due after the Aſſignment, no more than if the Lord once accept the Rent of the feoffee, he ſhall avow upon the feoffor. Leſſee. Aſſignment. Rent. Avowry.

Co.l.3.26.b. in *Butler & Barkers* Caſe. 14 Upon this Rule likewiſe it is, that the Law doth allow Agreement, or Diſagreement to an intereſt offered to the party, that is to have it; So if there be Lord and Tenant, and the Tenant by Deed enfeoff the Lord and a ſtranger, & make livery to the ſtranger in name of both, in this caſe, if the Lord onely by Parol diſagree to the Eſtate, it is nothing worth; for a Frank-tenement ſhall not be ſo lightly deveſted by naked Parol in pais: but on the other ſide, if the Lord enter into the Land generally, and take the profits, this act ſhall amount to an Agreement to the Feoffment; Howbeit if he enter into the Land, and diſtraine for his Seigniory, this act ſhall amount to a Diſagreement of the Feoffment, and ſhall devеſt the Frank-tenement out of him; and with this accords 20 E.4.12. by all the Juſtices. Lord. Tenant. Agreement. Diſagree.

15 E

15 If Lands be given to Baron and Feme in tail, and after the Statute of 32 H. 8. 36. the Baron alien the Land to the use of himself and his heires, and after devise it to his Wife for life and dies, here the Feme intermeddling by parol the Estate for life, this is a good Disagreement to the Estate of inheritance, and a good Agreement to the Estate for life, and with this accords 18 El. 351. b. Dyer, for the Law gives her power to take which of them she will. Ibid. b. 3.

16 If A. make an Obligation to B. and deliver it to C. to the use of B. this is the Deed of A. presently; but when C. offers it to B. here B. may refuse it in pais, and thereby the Obligation shall lose his force; and with this accords H. 1. El. Rot. 442. in Tawes Case, reported by Serjeant Benlowes, and by Dyer 267. But in this Case it seems upon an action brought for it he cannot plead non est factum, because it was once his Deed: There is the same Law also of a Gift of Goods and Chattels: if the Deed be delivered to the use of the Donee, the Goods and Chattels are to the Donee presently before notice or agreement, but the Donee may make refusal in pais, and thereby the property and interest shall be extinct, and such Disagreement need not be in any Court of Record. Ibid. b. 4.

17 A Common Recovery is not taken away by the Statute de donis but it shall barre the issue in tail because of the inforced recompence, wherewith the Tenant in tail seems to be content, the Law thereupon presuming, that so to suffer the Recovery tends rather to his benefit then prejudice. Co. l. 3. 60. a. b. in Lincoln Colledg Case.

18 B. enfeoffes another to the use of himself for life, the remainder to his Wife for life for her joynture, upon Condition to perform his will, and then dies, the Wife enters and agrees to it, and after brings her Writ of Dower, but her acceptance barres her Writ of Dower; for albeit her Dower was an absolute Estate for life, and this a Conditional Estate, yet it being an Estate for life, and she accepting thereof, the Law presumes she esteemed it a greater advantage, then to take her Dower, it being in her power after the death of her Husband to take or refuse it; So if a man make a Feoffment in fee to the use of himself for life, and after to the use of his Wife, remainder over for her joynture, if after the death of her husband she accept thereof, it shall barre her of her Dower. Co. l. 4. 3. a. 1. in Vernons Case.

19 Before the Statute of 21 H. 8. 13. if one had a Benefice with Cure, and accepts another Benefice with Cure, the first Benefice was void: By what, this was not an avoidance by the Common Law, but by the constitution of the Pope, of which avoidance the Patron might take notice, if he would, and might present if he would without any Deprivation, &c. Co. l. 4. 75. b. 1. in Hollands Case.

20 Feme Tenant for life makes a Lease at will reserving Rent, and after takes Baron, and she and her Baron bring an action of Debt for the arrerages after the marriage; In this Case, the Will is not determined by the inter-marriage; for albeit the feme by taking Baron, hath submitted her self to his Will, as her Head, yet because it may be prejudicial to the Baron to have the Lease determine, (for then he might lose the Rent due at the next Rent-day after the marriage) and it cannot prejudice the feme at all to have it continue, and it being in the power of the Baron to make it continue or determine the Lease, enough it to continue. Co. l. 5. 10. a. Henstedds case.

21 Tenant by Statute Marchant or Staple, &c. shall not be forced to shew a Deed in Court for the maintainance of their Estate, for they come in the Reversion of the Law by Process of Law against the will of him, that hath the Deed; but it is otherwise of a Lease for life. Co. l. 5. 7. a. b. in Symerds Case.

or yeares, &c. because he comes in by the Lessor, and might have taken a Covenant or other security, for his peaceable enjoying of the Land to him demised.

Co. l. 7. 8. a. The Earl of Bedfords Case. 22 Tenant in tail leaseth for yeares and dies; here, the King or other Guardian may avoid it: but if after his full age he accepteth the rent, the Lease is confirmed or continue during the terme. Infanc.

Co. l. 8. 98. b. in Baspoles Case. 23 In Arbitrament, when all matters in Controversie are referred to an Arbitrator to end; here albeit there are divers matters of difference betwixt the parties, yet if one onely be made known to the Arbitrator, he may make an award of that alone; for the Arbitrator is in the place of the Judge, and his Office is to determine secundum allegata & probata, and the duty is to acquaint him with their grievances, and with all the Causes of their differences, which if they or either of them omit to do, the Law presumes it is for their own advantage to conceal them; And therefore such Concealment shall not annul the award, that is made, albeit it be made onely of part. Arbitrament. Award.

Co. l. 8. 120. b. 3. in Doctor Bonhams Case. 24 It is presumed, that every one will make the best of his own Case; And therefore in any suit or action, when the Plaintiff makes Replication, Surrender, &c. whereby it appears that upon the whole Record, the Plaintiff hath no cause of Action, he shall never have Judgment, albeit the Barre, Rejoynder, &c. be insufficient in pleading, for the Court ought to judge upon the whole Record, and will suppose, that the Plaintiff hath managed his own Cause, as well as he can: So in an Action of Debt brought against an Executor, he pleads two Recoveries against him in a Court of Record, which amount to the whole in his hand, but sheweth not, that the Corporation had Jurisdiction to hold Court, either by Prescription, or by Patent; And it did also appear by the Count in that Court, that the Action of Debt was brought for 100 l. without mentioning any Obligation, and therefore it was to be intended, that there was no Obligation, and then the Executor was not chargeable in an Action of Debt upon a single Contract; And in this Case, albeit the Defendant in his Barre acknowledged, that the Debt was by Obligation, yet that shall not make the Count good, which the Law presumes the Plaintiff hath made as full as he could. Pleading

Co. l. 8. 133. a. 4. in Turners Case. Co. ibid. b. 2. 25. In Debt upon an Obligation with Conditions for performance of Covenants in an Indenture, the Defendant pleads performance of all the Covenants generally, and it appeares to the Court that some of them are in the Negative or Disjunctive, and so the Plea being in the general Affirmative is insufficient, yet if the Plaintiff reply and shew a breach of one of the Covenants, which by his own shewing is not any breach, upon which the Defendant demurres; In this Case, judgment shall be given against the Plaintiff, because (upon the whole Record) it appeares, that the Plaintiff had no Cause of Action, and it will be always intended, that every one will make the best of his own Cause. Pleading.

Co. l. 8. 135. a. in Sir John Needhams Case. 26 In Debt to Administrators upon Administration committed by the Bishop of R. the Defendant pleads Administration committed to himselfe by the Arch-Bishop of Canterbury, because the Intestate had bona notabilia, the Plaintiff replies, that that Administration was repealed; In this Case, because the Defendant did not shew in his barre, that the Intestate had bona notabilia in certains; It shall be intended, that he had not bona notabilia in divers Dioceses, yet the Administration committed by the B. of C. is not (in this case) void, but onely voidable. Admini-on.

27 If

Shewing a deed.

27 It is not expected that Tenant by Statute or Elegit, &c. should a Deed of the land, because they come to the possession thereof by execution of Law, and against the will of the terre-tenant; but Tenant by the courtesie ought to shew a release made to his wife, for the law presumes he hath both that and her in his power. Co. li b. 54 b.4. in Doctor *Leyfeilds* Case.

Letters Patents. Suggestion.

28 The suggestion of the party being inserted in Letters Patents raiseth always suspicion, because the Law presumes it is inserted to work him some advantage; So if the King by his Letters Patents grant White-acre, and Black-acre to I. S. with this clause, quæ quidem præmissa, &c. à nobis concelata & detenta fuerunt, &c. This in judgement of Law is the suggestion of the Patentée, and shall make the grant void: So in 19 E. 3. tit. Grant 58. the King by his Letters Patents grants licence to appropriate the Advowson of D. to the Prior of C. quæ quidem advocatio non tenetur de nobis, and in truth the Advowson was held mediately of the King; here, the licence was held void; for (the Booke saith) the suggestion was false: vide plus ibid. Co. l. 10. 112. a. 2. &c. in *Legas* Case.

Pension. Court Christian.

29 If a Parson or Vicar hath a pension out of another Church, and the pension is with-drawne, or another parson takes or claimes it; in this case the Parson or Vicar, that ought to have, may sue for it in the Court Christian, and he shall not be stopped by a prohibition, but shall have consultation: Also upon the prescription he may have a writ of Annuity for it, at his Election; but if he once bring a writ of Annuity for it, he shall never after sue for it in the Court Christian. F. N B. 51. k.

Dower. Exchange.

30 If the Baron exchange land, and after die, if the Feme hath dower of the land taken in exchange, she shall not have dower also of the land given in exchange. F. M. B. 149. m.

Rent-charge. Annuity.

31 Upon grant of an Annuity out of land for yeares, for life, or in fee, which clause of distresse, the grantée hath his Election (if it be behind) whether he will distraine, or bring his writ of Annuity for it; Howbeit if once he do either, he is for ever after concluded for doing the other: for the Law supposeth he will make choise of that, which tends to his best advantage. F. N. B. 152. a.

The time is in him, that hath benefit.

32 Where a man is to have benefit upon an act, which is first to be done by himselfe, and no time is limited, when it shall be done, the Law saith that he may do it at his pleasure, as if a man make a feoffment upon Condition, that if he pay the Mortgagée 20 l. that then he shall re-enter, here in as much as no day of payment is limited, the Mortgager may pay it when he pleaseth, for he is to have the benefit, viz. the land again: So if one grant to another that when he shall take his daughter to wife he will give him 20 l. in this Case, because no time is limited for the taking of his daughter to wife, he may take her when he will: So in Fogasses Case in the Comentaries, in as much as the payment of the subsidie was to be made unto the Collector upon the weying of the wood, and a time is limited for the weying, the Law referres the time thereof to the will of the Collector. Pl. 16. a. 4. in *Fogassat* ca.

Advantages neglected discovin.

33. In Wimbish and Tabbois Case in the Comentaries one argument to prove covin in the Feme there, was, because he did not in answering that suit take such advantages, as the Law allowes in such Cases as view, essoine, and the like, but immediately appeares, and suffers the Demandant to recover by nihil dicit: For the Law presumes (unlesse there be covin, or otherneglect or restraint which cannot be avoided) that the party interessed will take all advantages, that the Law allowes, to make good his owne cause, which advantages are the birth-right of the subject, as Lands or other Inheritance, and when they are waved or neglected, the Law implies covin, or some other miscarriage. Pl. 55. b. 2. in *Wimbish* and *Talbois* Case.

Co. Inſt. p. 1. 46. b. 4.

34 The King grants lands to A. in taile, to hold by Knight-ſervice A. makes a leaſe to B. for 21 yeares, reſerving rent, A. dies, his ſon and heire of full age, and all this if found by Office now here, as to the King this leaſe is not of force, for he ſhall have his primer ſeiſin, as of lands in poſſeſſion: but after livery the Leſſee may enter, and then if the iſſue in taile accept the Rent, the leaſe ſhall bind him, for the Kings primer ſeiſin ſhall not take away the Election of the iſſue in taile: becauſe it may be the Rent was better then the land, and ſo the Law will preſume, that his accceptance tended to his advantage, and therefore he ſhall be bound thereby: In like manner Tenant in taile makes leaſe for 40 yeares, reſerving a Rent, to begin 10 yeares after, Tenant in taile dies, the iſſue enters and enfeoffes A. the ten yeares expire, the leſſee enters: now in this Caſe alſo, if A. accept the Rent, the leaſe is good, for he ſhall have the ſame Election, that the iſſue in taile had, either to make it good or to avoid it: But becauſe the leſſee accepts the Rent, the Law preſumes it was for his advantage ſo to do, and therefore thereupon adiudges the leaſe ſtill good, notwithſtanding ſuch entry of the heire before it commenced.

Tenant in tail Leaſe. Primer ſeiſin.

Co. ib. 46. b. 1. and Pl. 437. a

Feofment.

Litt. §. 559.

35 If there be Lord and Tenant, and the Tenant take Feme, and after the Lord grants the ſervices to the Feme and her heirs, and the Baron accept the Deed: In this Caſe, after the death of the Baron, the Feme and her heirs ſhall have the ſervices, for the acceptance of the deed by the Baron is good attornment; albeit the ſervices are in ſuſpence during the coverture: ſo likewiſe if a man let land to another for terme of life, and after confirmes by his deed the Eſtate of the Tenant for life, the remainder to another in fee, and the Tenant for life, accepts the deed, this is a good attornment in law to make the Eſtate in remainder good.

Acceptance good attornment.

Litt. §. 573.

Co. l. 3. 86. b. 2. in the Caſe of *Fines.*

36 Every Fine levied ſhall be intended to be levied with proclamations according to the Statutes in that behalfe provided, becauſe that is moſt beneficial for the Counſe.

Fines.

Dier 244. 59. 8 Eliz.

37 There were four Defendants in an Aſſize of plaint of three meſſuages, three of them ſeverally undertake the Tenancy of the ſeveral meſſuages, and plead ſeveral bares, and to the reſidue Nul tort, the fourth takes upon the entire tenancy of all, without that, &c. and pleads alſo bares at large: In this Caſe, the Plaintiffe at his perill is to ſhoſe his Tenant, becauſe the law preſumes, that he will do it for his beſt advantage.

Aſſize.

117 And therefore the Law believeth againſt the party whatſoever is to his prejudice.

Co. Inſt. p. 1. 32. a. 4.

1. If one as Procurator or Attorney to another preſent to his owne benefice, he puts himſelfe out of poſſeſſion, becauſe it is his owne act, and the preſentee comes in by the inſtitution an inunction of the Ordinary.

Preſent. Benefice.

Co. ib. 55. b. 3.

2. If Leſſee at will ſow the land, and the leſſor determines his Will, or dies, before the graine is ripe, yet the leſſee ſhall have it; becauſe in either of the ſaid Caſes, the end of the term is uncertaine, either upon the Will or death of the leſſor, which cannot come within the leſſees power to prevent: but if leſſee for yeares, who may know the end of the term, ſow the land he ſhall not have the graine; becauſe his term is certain: And therefore the Law will attribute the ſowing of the land to his owne folly: So if leſſee at will ſow the ground with Coarne, &c. and after he himſelfe determines his will and refuſeth to occupie the ground: In that Caſe, the leſſor ſhall

Litt. §. 68. Co. ib. 56. b. 4.

Tenant for life or will. Grant. Sower.

have

have the grain: for otherwise the lessor should lose his Rent, and the lesse hath determined it by his own act: In like manner, if a woman that holdeth land durante viduitate, sow the ground, and taketh husband, the lessor shall have the emblements, because the determination of her Estate grew by her own act: So likewise, where the Estate of the lesse being uncertaine is defeasible by a right paramount, or if the lease determine by the act of the lesse, as by forfeiture; condition, &c. there he that hath the right paramount, or that entreth for any forfeiture, &c. shall have the Corne, causa qua supra.

ord and Te-nant. Wardship. Release. 3 If there be Lord and Tenant by Knight-service, and the Tenant dieth his heire being within age, the Lord wardeth his wardship (as he may) and taketh himselfe to his Seignory: In this Case the Lord shall not have relefe at his full age, because he might have had the wardship of the body and land, if he had not neglected his time. Co. lib. 83 b. 4

Caveat emptor. 4 By the Civill law every man is bound to warrant the thing, that he selleth or conveyeth, albeit there be no expresse warranty: but the Common Law bindeth him not unlesse there be a warranty in deed or in Law, for the Common Law delivereth against the party things done to his prejudice, and therefore in such Case, Caveat Emptor. Co. lib. 102. a. 1

Villeinage by confession. 5 If a man being brought into a Court of Record by course of Law will there acknowledge himselfe to be a Villein (albeit he was not a Villein before) he shall be for ever after a Villein in grosse: and therefore if a precipe be brought against one he may confesse himselfe Villein to a stranger, and that he holds the land in Villeinage of him, and thus he gives and shall bind him; and if (in that Case) the Demandant replie, that the Tenant the day of his writ purchased was a Free-man, and thereupon issue is taken, and he is tried to be free, yet he shall remain Villein to the stranger in respect of his confession: So likewise in a writ of nativo habendo, if the Plaintiffe (as he ought) offereth in his Count to prove the Villeinage by the Cousins and kindred of the Defendant, and thereupon produceth the Uncles of the Defendant, who upon examination confesses themselves to be Villeins to the Demandant, this confession being entred of record doth so bind, that albeit they were free before, yet they and the heirs of their bodies are by this confession bound and Villeins for ever, &c. Litt. l. 3. c. 12. Co. Inst. p. 1. 122. b. 2.

Franchise. 6 If the Lord deliver seisin of Lands to his Villein, to hold in fee, fee taile, for life, or for yeares, or make him any other certaine Estate, or if the Lord sue against his Villein a precipe quod reddat and recover or be non-suit, or sue against his Villein any other personall action, as debt, account, covenants, trespass, or the like: These are manumissions, because (in the first Case) the Lord may enter into the land of his Villein, and (in the other) may imprison his Villein, or take his goods (at his pleasure) without suit: but by such suits the Lord maketh the Villein to be a person able to render the Lord (in the first Case) the land, and (in the other) damages by course of Law: In like manner, if before indictment the Lord bring an appeal of felony against his Villein, whereupon the Villein is acquit, this is an enfranchisement, because upon the acquittal he shall recover damages against the Lord by the Statute of West. 2. cap. 12. quia multi per malitiam, &c. In summe, wheresoever the Lord giveth to the Villein a just cause of Action, he is enfranchised; and therefore if the Lord kill his Villein, his Son and heire shall have an appeale, and thereby the heire shall be enfranchised, because the offence of the Lord gives to the heire a just cause of Action against the Lord. Litt. §. 206 & 108. Co. lib. 138. a. & b. 3.

Joinder in Ad. 7 If there be two Coparceners, and the one dying a Rationabili parte, or a Nuper obijt against the other, and the defendant claimes by Co. lib. 164. b. 2

purchaſe, and diſclaimes in the bloud; here, the Plaintife ſhall have a Mordanceſter againſt her as a ſtranger for the whole.

Co. ib. 170. b. 4

8 When partition is made by the two Barons in the life time of their Femes Coperceners, although ſuch partition be unequal, yet it is not voyd, but voydable; For if after the deceaſe of the husband, the wife entreth into the unequal part, and agreeth thereunto, this ſhall bind her and her heires for ever: There is the ſame Law of an Infant, when his part is unequal, for by his entry at full age the partition is made good for ever.

Unequal partition. *Feme covert.* Infant.

Co. ib. 171. a. 4

Co. ib. 172. b. 3 & 173, a. 3. & Litt. §. 260, & 261.

9 If a man having Iſſue two Daughters die ſeiſed of Fée-ſimple lands and alſo of as much in taile, and the eldeſt ſiſter takes the entailed land for her proper part, an the youngeſt ſiſter enters into the Fée-ſimple lands and having iſſue alienes them to a ſtranger, and dies: In this Caſe, the iſſue in taile may enter into the intailed lands, and occupie them in Copercenery with her Aunt: for it was the folly of the eldeſt ſiſter to take the entailed lands for her part.

Coperceners of fee-ſimple and entailed Lands.

Litt. §. 286. Co. ib. 185. a. 3

10 If there be joint-tenants in fée, and the one granteth a Rent charge out of his part, and dieth; in this Caſe, the ſurvivor ſhall hold the land diſcharged of the Rent: becauſe he claimeth the land by a title paramont, viz. from the firſt feoffor, and not by his companion: but here, if after the land is charged with the rent, the other joint-tenant accept of a releaſe from his companion, that ſo charged the land, in ſuch caſe, he ſhall hold the land charged with the rent, for now by acceptance of ſuch releaſe he is not in by ſurvivorſhip, but from his companion.

Joint-tenant. Rent-charge. Releaſe.

Co. ib. 202. a. 2

11 The demand of a Rent or other ſum to take advantage of a re-entry or condition broken ought (by the law) to be made (where no other place or time is limited for the payment thereof) upon the Land at the moſt notorious place there (as at the fore-dore gate, or the like) and at the laſt part of the day, ſo as the money may be conveniently numbred before Sun ſet: yet if upon the day of payment thereof the leſſée or ſeoffée happen to meet the leſſor or feoffor upon any part of the Land, (although it be not the moſt notorious place) or at any time of the laſt day (although it be not the laſt part, as afore-ſaid) in ſuch caſe if the Leſſor or feoffor refuſe it, he ſhall not take advantage of a re-entry or Condition broken, as afore-ſaid; for by ſuch refuſal (being his owne Act) he hath barred himſelfe of that advantage.

Demand of Rent, &c. upon a re-entry. Condition.

In *wades* Ca. Co. l. 5. 114. b. 2

Co. ib. 202. b. 3

12 A. is bound to B. to pay 10 l. to C. A. tenders to C. and he refuſeth, in this Caſe, the bond is forfeit; for it ſhall be imputed the folly of A. to undertake to pay it to C. of whom he had no power, to compel him to receive it.

Payment to a ſtranger.

Co. Inſt. p. 1. 209. a. 2 Co. l. 6. 31. a. 2 in *Bothies* Ca

13 If a man be bound to A. in an obligation with condition to enfeoffe B. (who is a meere ſtranger) before a day, the obligor doth offer to enfeoffe B. and he refuſeth, the obligation is forfeit; for the obligor hath taken upon him to enfeoffe him, and his refuſal cannot ſatisfie the condition, becauſe no feofment is made, but if the feofment had been (by the condition) to be made to the obligée, or to any other for his benefit or behoofe; in ſuch Caſe, a tender and refuſal ſhall ſave the bond; becauſe he himſelfe upon the matter is the cauſe, wherefore the Condition could not be performed, and therefore ſhall not give himſelf cauſe of action ſo alſo if A. be bound to B. with Condition, that C. ſhall enfeoffe D. In this Caſe, if C. tender, and D. refuſe, the obligation is ſaved for the obligor himſelf undertaketh to do no act, but that a ſtranger ſhall enfeoffe a ſtranger, and in ſuch caſe it ſhall be intended, that the feofment ſhould be made for the benefit of the obligée.

Obligation with Condition to enfeoffe

Litt. §. 340 Co. ib. 210. a. 4

14 If A. make feofment or be bound to B. with condition to pay 20 l. at ſuch a day, no place being limited for the payment thereof, here A. is bound

No place of payment.

bound to seeke B. (if he be in England) to make payment or tender thereof for the law presumes that it was so intended when the feoffor or obligor doth not limit any place in certain for the payment thereof.

thing in ano satisfaction.

15 If feofment be made upon condition to pay money, and the feoffee pay to the feoffee an horse, a cup of silver, a gold-ring, or the like, in full satisfaction of the money, and the other receive it, this good enough, and as strong, as if he had received the sum of money, albeit such horse, ringe, or other thing was not of the 20th part of the value of the money: so also not onely a thing in possession, but also a thing in action may be taken in satisfaction of the money; for if the obligee or feoffee accept a Statute or a bond in satisfaction of the money, it is a good satisfaction. Litt. §. 344. Co.ib.212.b.4

good satisfaction.

16 Where the Condition is for 20 l. the obligor or feoffor cannot at the time appointed pay a lesser sum in satisfaction of the whole, because it is apparent, that a lesser sum of money cannot be a satisfaction of a greater; but if the feoffee or obligee do at the day receive part, and thereof make an acquittance under his seal in full satisfaction of the whole, it is sufficient, because the deed amounteth to an acquittance of the whole: so if the obligor or feoffor pay a lesser sum, either before the day, or at another place, then is limited by the Condition, and the obligee or feoffee receiveth it, this is a good satisfaction. Co. ibidem.

Feme accepting estate for life.

17 Where feofment is made upon Condition to give the land to the feoffor and his wife and the heirs of their two bodies, the remainder to the right heires of the feoffor in fee; In this Case (Littleton saith) if the feoffor die before such Estate made, the feoffee ought to grant the land to the Feme for life without impeachment of waste, the remainder to the heires of the feoffor in fee, and yet here, if the Feme accept of any Estate for life, without this clause, without impeachment of wast, it is good. Litt. §. 352 Co.ib.219.b.4

Office.

18 Officers that have no other profit, but a bare collateral fee, may be discharged of their Offices and service, but yet they shall have their fee; and where the fee issues out of the profits of the land the grantor cannot discharge them of their service or attendance: but in all Cases, where the Officer relinquisheth his Office, and refuseth to attend, he loseth his Office, fee, profit, and all. Co.ib.233. a.4

Acceptance of Rents.

19 If there be Lord and Tenant, and the Tenant is disseised, and the cattel of the disseisee are taken: in this Case (by reason of the privity betwixt the Lord and the disseisee) the disseisee may compel the Lord to avow upon him; yet here, if the Lord have before accepted the services of the disseisor, the disseisee cannot enforce the Lord to avow upon him: So likewise, where a man have title to have a writ of escheate, if afterwards he accept homage or fealty of the Tenant, he is barred of his writ of escheate: It is otherwise of acceptance of Rent, (for that may be received by a Bailiffe) unlesse he avow for it in a Court of Record: So likewise if the Lord accept the Rent by the hands of the heire of the disseisor or of his feoffee, because they are in by title, this shall barre him of his escheate: Howbeit concerning Avowries the ancient law is now altered by the Statute of 21 H. 8. 19. which see, &c. Co.ib.268.a.4

Rent lost.

20 If there be Lord and Tenant, and the Rent is behind by divers yeares, and the Tenant make a feofment in fee, if the Lord accept the service of Rent of the feoffee due in his time, he shall lose the arrearages due in the time of the feoffor: for after such acceptance he shall not avow upon the feoffor, nor upon the feoffee, for the arrearages incurred in the time of the feoffor. Co.ib.269.b.3 & Co.l.3.65. b.4. *Peniuants Case.*

Rent in gross.

21 A man cannot be disseised of a rent-service in grosse, a rent-charge, or a rent-secke by attornment or payment of such a rent to a stranger, but Litt.§.589. Co.ib.323.b.3

but at the Election of him, to whom such Rent is due: for, Nemo redditum alterius invito domino præcipere aut possidere potest: yet if the disseisee bring an Assise against such a person, or taker of such Rent, he doth thereby admit himselfe out of possession thereof; For every disseisee, a discent of a Rent in grosse bindeth not the right owner, but that he may distraine, albeit he admitted himselfe out of possession, and determined his Election, as by bringing an Assise, or the like.

Co. Inst. p. 1. 323. b. 4. 22 In Case of such Rents, if the Tenant give a Stranger any thing in name of Attornment, and then the right owner releaseth the Stranger, such release is void, because an attornment onely can be no disseisin of such a Rent: but if the Tenant of the Land pay the Rent to a Stranger, and then the right owner releaseth to him, this release is good, because he thereby admitted himselfe to be out of possession. Release to a stranger of such a rent.

Co. ib. 332. b. 1 22 If Tenant in tayle of a Rent-service, &c. or of a reversion, or remainder in tayle, &c. grant the same in fee both warranty, and leaveth assets in Fee-simple, and dieth, this is neither barre nor discontinuance to the issue in tayle, but he may distraine for the Rent or service, or enter into the land after the decease of the Tenant for life: but if the issue bring a Formedon in descender, and thereby admit himselfe out of possession, he shall be then barred by the warranty and assets. Co l. 3. 85. a In the Cases of Fines. Tenant in tail barred by a Formedon.

Co. ib. 344. a. 1 Hill. 1. Jac. Coram Rege, Rot. 601. inter *Faire-childe* Plaintiffe and *Gayer* Defendant in trespass. 24 A Church Parochial may be donative & exempt from all ordinary jurisdiction, and the Incumbent may resigne to the Patron, and not to the Ordinary, neither can the ordinary visit but the Patron, by Commissioners to be appointed by him, and (by Littletons Rules 5. 648.) the Patron and Incumbent may charge the glebe, and although it be donative by a Lay-man, yet mere Laicus is not capable of it, but an able Clerk infra sacros ordines; for albeit he come in by lay donation, and not by admission or institution, yet his function is spirituall, and if such a Clerke donative be disturbed, the Patron shall have a *Quare impedit* of this Church donative, and the writ shall say, *Quòd permittat ipsum præsentare ad Ecclesiam*, &c. and declare the speciall matter in his declaration: And so it is also of a Prebend, Chantery, Chappel, Donative, and the like, and no laps shall incurre to the Ordinary, except it be so specially provided in the foundation: Nevertheless, if the Patron of such a Church, Chantery, Chappel, &c. Donative, doth once present to the Ordinary, and his Clerke is admitted and instituted, it is now become presentable, and never shall be donative after, and then also laps shall incurre to the Ordinary, as it shall of other benefices presentable: but a presentation of such a Donative by a Stranger, and admission and institution thereupon, is meerly void. A Church donative made presentable.

Co. ib. 367. a. 3 25. If the Tenant make a lease of the land to the Lord for yeares, or the Lord be Guardian of the Land, or have it by Statute or Elegit, and then make feoffment in fee thereof to a Stranger: Here, albeit as to the Lessor this is a disseisin, yet hereby the Lord hath extinguished his Seigniory. Seigniory extinct.

Co. ib. 370 b. 2. 26 Husband and wife Tenants in speciall tayle, of certaine land in fee have issue a Daughter, the wife dieth, the husband by a second wife hath issue another Daughter, and dies, both the Daughters enter (where the eldest is only inheritable) and make partition: in this case the eldest daughter is concluded during her life to impeach the partition, or to say that the youngest is not heire. So likewise I. S. seised of lands in fee hath issue two daughters, Rose bastard eigne, and Anne, mulier puisne, who enter and make partition, in this Case, Anne and her heires are concluded for ever. Parceners.

27 A

dition to
farther
nce, by a
not let-

27 A. is bound with Condition that he and his ſon ſhall at any time after make better aſſurance of lands ſold to B. B. tenders a writing unto them, the ſonne being not lettered deſires time to be adviſed of it, which being denied, he doth not deliver it; In this Caſe, albeit a man unlettered is favoured in the Law, ſo as it is not his Act, if the writing be not read unto him, or rightly expounded, although he deliver it; yet here, becauſe A. undertooke that his ſon ſhould do it, and no certaine time was limited for the doing thereof, the bond in this caſe is forfeit, for the time for doing of it was peremptory. Co. lib. 2. 3. b. *Marſers* Caſe.

a not let-
ſcales a

28 A lay-man not lettered is not bound to deliver a deed, if there be not a perſon preſent, that can read or expound the deed to him in ſuch language as he underſtands, neither is he bound thereby, if it be read or expounded to him in another manner, then the words and matter thereof import, and it concernes the party, that ſhould take it, to ſee that done, if the party that ſhould deliver it require the ſame; but if the party, that ſhall deliver the writing requires it not to be done, he ſhall be bound by the deed, although it be drawn contrary to his meaning. Co. lib. 2. 9. *Thoroughgoods* Caſe.

hold
it.

29 The King grants a leaſe of lands held of him by Copy to A. who aſſignes to the Copi-holder, the King grants the reverſion in fee to B. the terme for years expires: here, the entry of B. is lawfull; for, by the acceptance of the aſſignment of the term, the copi-hold is determined. Co. l. 2. 17. 2. 4 *Lanes* Caſe.

tenants
prejudice
nother.

30 As to the profits of the frank-tenement, one joint-tenant may prejudice another; for there is a privity and truſt betwixt them: and therefore if one of them take all the profits of the lands, or all the Rent, the other hath no remedy; for the Law imputeth it to his folly to joine himſelfe in Eſtate with ſuch a perſon, as will breake his truſt: So likewiſe if there be two Lords and a Tenant of lands holden by knight-ſervice, and the Tenant die his heire within age: here, the Lords have Election either to ſeiſe the Ward, or to diſtraine for the ſervices, and ſo to waive the Ward, as it is agreed in 1 l. 3. But in this Caſe if one of them ſeiſe the Ward, and the other diſtraine for the ſervices, he that firſt ſeiſeth or diſtraines ſhall bind the other. Co. l. 2. 82 b. 4. *per Popham in Tookers* Caſe.

ent up-
ondition
n.

31 If A. enfeoffe B. of a Mannor with an Advowſon appendant upon Condition, that A. ſhall grant B. the Advowſon during his life A. dies before he grants it: In this Caſe, the Condition is broken; For when the feoffee or grantee upon Condition is to make an Eſtate to the feoffor or grantor, and no time is limited for the doing thereof, regularly it is true, that the feoffee hath time to do it during his life, if the feoffor or grantor do not helpen it by requeſt, for upon requeſt and a day of time limited, when he will have it done, the feoffee or grantee ought to do it accordingly; but if no Requeſt be made, and the feoffee or grantee, who ought to performe the Condition, die, in this Caſe the Condition is broken: for he hath not performed the Condition within the time preſcribed to him by the Law, which was during his life. But this generall Rule admits ſome exceptions, which never-theleſſe are agreeable to this Maxime, for in this Caſe of an Advowſon A. hath not time during his life, albeit no requeſt be made, but alſo upon this contingent, viz. if no avoydance fall in the meane time; for if the grantee ſtay until an avoydance fall, then ipſo facto the Condition is broken, for then B. cannot have the whole effect, that by the re-grant he ought to have, becauſe that is, to have all the preſentations during his life, the Advowſon is become in another plight, then it was in before: for if A. enfeoffe B. the 1. of May upon condition that he ſhall grant to B. an Annuity or Rent during his life payable yearly at Mich. Co. l. 2. 78 b. 4. &c. in the Lo. *Cromwells* Ca.

and

and La. da. in this Case the feoffée hath not time during his life to make this grant, but ought to do it before Mich. for otherwise he shall not have the Annuity or Rent during his life, and it may be collected upon the Books of 14 E. 3. tit. Debt 138. that in Case of the grant of a rent he shall not have time during his life: Likewise if two not married be enfeoffed upon Condition to re-enfeoffe the Donor or feoffor, &c. and one of them die: yet the other may perform the Condition; but if he that survives hath a wife, then is the Condition broken: for if he made the re-enfeoffment, yet shall his wife be endowed: And in all these Cases and the like the Law imputeth it to the Laches and folly of the grantée, that he will not perform the Condition, while he may, and believeth against him these and the like things done to his owne prejudice.

Co. l. 3. 85. b. 2. in *Pennants* Case. 32 If he, that hath a Rent-service or Rent-secke, accept the Rent due at the last day, and thereof make an acquittance; all the arrearages due before are thereby discharged, and so it was adjudged betwixt Hopkins and Merton in that Common Place, H. Rot. 950. Vide 10 El. Dier 271. But there the Case is left at large; with this also agrées 11 H. 4. 24. & 1 H. 5, 7, 6. But note, that the barre to the avowrie ought to be with conclusion of judgment, Si encounter ceste fait d'acquittance il doit faire Avowry, as appeares by the Record of 10 El. and he ought not to demand judgment si action. Tequire the last

Co. lib. 6. 2. 4. 33 If there be Lord and Tenant by Knight-service, and the Tenant enfeoffe his son and heire within age by Collusion: In this Case, if the Lord accept the services by the hands of the feoffée, he shall lose the ward; for the Statute of Malbridge cap. 6. making such feofment by Collusion voide and of no effect as to the Lord, if the Lord will affirm the feofment and waive the benefit of that act by acceptance of the feoffée for his Tenant, he shall thereby purge the collusion, and therefore reterveth to lose the ward. A tenant shall ha ward.

Co. l. 4. 1. a. & 2 b. 4. *Vernons* Case. 34 B. enfeoffes to the use of himselfe for life, remainder to his wife for life, with Condition to perform his last will and for her jointure, and dies, the wife enters, agrées to it, and after brings her writ of power; In this Case, if after the death of the husband the wife accept of that conditional Estate, such acceptance shall barre her from having power: for albeit power at the Common Law (in lieu whereof a jointure is granted) be an absolute Estate for life, yet in as much as an Estate for life upon Condition is an Estate for life, it is within the words and intent of the Statute of 27 H. 8. 10. to barre the wife of her power, if after the death of her husband she accept thereof: So if the husband enfeoffe to the use of himselfe for life, the remainder to the use of his wife durante viduitate for her jointure, this is an Estate to her for life, and cannot determine without her owne Act, and therefore a jointure also within the Statute, if after the husbands death she accept thereof. Jointu her e

Co. l. 4. 9. b. 2. in *Bevils* Ca. 35 If there be Lord and Tenant by fealty and Rent, and the Lord grant over the fealty saving the Rent, or if a man make a gift in taile or lease for life rendring Rent, and grant over the reversion, except the Rent, in these Cases, the nature of the Rent, is altered by the parties owne Act: and therefore the ancient seisin, when it was Rent-service, will not in such case suffice, because by his own act the nature of the Rent is changed, neither can he have for it an Assise as of a Rent-secke, because he was never seised of any such Rent. Rent-se made R secke.

Co. l. 4. 11. b. 2. in *Bevils* Ca. 36 If there be Lord and Tenant by fealty and two shillings Rent, and the Lord by encroachment (viz. by the voluntary payment) of the Tenant) happens seisin of more Rent, then he ought to have, the Tenant Rent by croach

shall

shall not (in avoidry) avoid such fetlin had by accroachment, unlesse it be in some special Cases, which see ubi supra.

Arrerages irrevocable.

37 If A. hath Rent-service or Rent-charge in fee or for life; and the Rent is arreare, and after A. grants over the Rent to another, and the Tenant attornes, and after A. dies, his Executors are not within the branch of the Statute of 32 H. 8. 37. which gives power to Executors, &c. to recover Debt due to the Testator at the time of his death, for by the grant over the arrecages were lost, and were not due to the Testator at the time of his death: And therefore when the Testator by his own Act in his life time had dispenced with the arrerages, the said Act gives no remedy to recover them. Co. l. 4. 30. b. 4. in *Andrew Ogwels* Case.

Will revolld by marge.

38 If a Feme sole make a Will, and after take Baron, this is a revocation thereof; for the making of a Will is but the Inception thereof, and it takes not any effect, until the death of the Devisor: because cujus Testamentum morte consummatum est; & voluntas est ambulatoria, usque ad extremum vitæ exitum. And therefore it being no perfect Will when he takes Husband, and after marriage her Will being her Husbands and subject to it, by taking Husband she hath wholy revoked the Will formerly made. Co. l. 4. 61. a. 4. in *Forse* and *Hawblings* ca.

devise. bury. render.

39 A. deviseth Land to B. till 800 l. be raised for the preferment of his daughters A. dies, C. being heire conceales the Will, and enters: In this Case, B. shall have allowance for the time, that the Will was concealed, and that time shall not be accompted parcel of the time for the levying of the money: But if B. had surrendred to C. upon Condition, and had entred for the Condition broken, that should have been accounted parcel of the time, for that was his own Act. Co. l. 4. 82. b. 3. Sir *Andrew Corbets* Case. Co. l. 5. 13. b. 3. in the Countesse of *Shrewsberies* ca.

fall.

40 At the Common Law (before the Statute of Glocester cap. 5. 6 E. 1.) no remedy lay for waste (either voluntary or permissive) against Lessee for life or yeares, because the Lessee hath Interest in the Land by the Act of the Lessor, and it was his folly to make such a lease, and not to restraine him (by covenant, condition, or otherwise) from making waste: And for the same reason it is, that at this day Tenant at will shall not be punished for permissive waste: but for voluntary waste, he may according to Littleton fol. 15.

fall. render.

41 A. demiseth the Mannor of D. to B. for 30 yeare, except the underwood growing upon it, and after demiseth the underwood to him for 62 yeare without impeachment of waste, afterwards B. accepts a lease of 30 yeares of the Mannor after the expiration of the first 30 yeares; In this Case, because the demise of the underwood did not sever it from the Mannor (the entire franktenement notwithstanding such demise remaining still in the Lessor) by his acceptance of the last lease for 30 yeare the former two leases were surrendred, and so (by consequent) if afterwards the Lessee commit waste, he is subject to an Action for it. Co. lib. 5. 11. *Ives* Case.

bligation.

42 If a man be bound to make another before such a time such a release, as the Judge of the Prerogative Court shall devise and appoint: In this Case, if the Obligor do not onely the first Act, but likewise procure the Judge to devise and direct the release before the time limited, the bond is forfeit; for in as much as the Judge is a stranger to the Condition, and the Condition is for the benefit of the Obligor, and the performance thereof shall have his obligation, he hath undertaken to performe it at his perill. Co. l. 5. 52. b. 3. *Lambs* Case.

gation.

43 If a man be bound to make to another a sufficient and lawful Estate in certain Lands by the advise of I. D. If he make an Estate to him according to the advise of I. D. be it sufficient or not, or lawful or not lawful, yet he saves the Obligation: for if it be insufficient or Co. ibidem.

unlawful, the Obligee may thanke himselfe, to make choice of such a man, as could give no better direction. Fair dit.

Co. l. 5. 33. b. 4. in *Reades* ca. 44 If after the death of a man, none takes upon him to be his Executor, or if he dies intestate, none takes out letters of administration; In such Case, if a Stranger ats the goods of the dead, or takes them into his possession, which is the office of an Executor or Administrator, such Stranger may be charged as Executor of his own wrong; For the Co. ibid. 34. a. Creditors of the dead person have not in such Case any other, against whom they may bring their actions for the recovery of their debts, or albeit there be an Executor that Administers, yet if the Stranger take the goods, and claiming to be Executor payes debts, and receives debts, or pays Legacies, and intermeddle as Executor, in such Case also by such exprelle Administration as Executor, he may be charged as Executor of his own wrong. Vide Dier 166. 10. 1. El. Executors is his owne wrong.

Co. l. 5. 115. a. 3 in *Wades* Ca. 45 If the Lessor demands Rent of his Lessee according to the Condition of re-entry, and the Lessee pay the Rent to the Lessor, and he receives it and put in his purse or pocket, and after upon revolving thereof at the same time, he finds amongst the money, that he had received some counterfeit pieces, and thereupon refuseth to carie away the money, but re-enters for the Condition broken: In such Case, it is said it was adjudged betwixt one Vane and Studley, that the entry was not lawful, for when the Lessor had once received the money, it was at his perill, and after such allowance, he shall not take exception to it. Acceptance of counterfeit money.

Co. lib. 5. 116. a. 3. *Olands* Case. 46 A Feme Copi-holder of certain land, durante viduitate sua, according to the Customs of the Manor sowes the Land, and before the severance of the graine takes Baron: In this Case the Lord shall have the graine: For albeit at the time of sowing the graine, the Estate of his wife was uncertain, and although her Estate determined by limitation, and not by condition, either in deed (as in Case of re-entry) or in Law (as by forfeiture) yet because it determined by the Act of the Lessee her selfe, the Lord shall have the graine and not the Husband: So if a Feme sole of land (durante viduitate sua) make a lease for Years, and the Lessee sole the land, and after the Feme, that made the lease, takes Baron; here, the Lessee shall not have the graine: for albeit his Estate is determined by the Act of a Stranger, yet he shall not be (as to the Lessor) in a better Case, than his lessor was, and the law supposes it to his folly to depend upon so fickle a thing as the will of a woman, especially, in point of marriage. Graine sowed *Durante viduitate.*

Co. ib. a. 4. 47 If Tenant at will sow the land, and after the will is determined, the Lessee shall have the graine, but if the lessee himselfe determine the will before the severance of the graine, he shall not have them; because he hath determined his Interest by his own Act: So if Lessor at will be out-lawed, whereby the will is determined; In this Case, the King shall have the profits, and the Lessee shall enjoy the graine; but if Lessee at will be out-lawed, whereby the will is determined, in such Case the King shall have the graine. Vide 9 H. 6. 20, & 21. & Dier 173. 15. Tenant at will sowes graine.

Co. ib. b. 1. 48 If a lease be made to Baron and Feme during the coverture, and the Baron sow the land, and after they are divorced; causa praecontractus, the Baron shall have the graine and not the Lessor; for albeit the fault is the Act of the party, yet the sentence, which dissolves the marriage, is the judgement of law, Et judicium redditur in invitum, but if a lease be made to one until he make waste, and he sow the garlick, and after make waste, he shall not have the graine. Vide Max. 30. 34. Graine for divorce. Waste.

49 In

satisfaction of debt by deed

49 In Debt upon an Obligation of 10 l. the Plaintiffe pleades, that one F. was bound by the same Deed with him, and each of them in the whole, and that the Plaintiffe made an acquittance to F. bearing date before the obligation, but delivered after; by which acquittance he acknowledged himselfe to be paid 20 s. in full satisfaction of the 10 l. and this was adjudged a good barre; for if a man will acknowledge himselfe to be satisfied by Deed, this is a good barre without receiving any thing. Vide 36 H. 6. Barre 17. 12 R. 2. Barre 243. & 10 H. 7. Yet payment of a lesse sum in satisfaction of a greater is not good satisfaction, because a lesser sum can by no possibility be satisfaction for a greater. Co. l. 5 117. b. 4 *Pinnels* Case.

ntire service, multiplied, &c.

50 If one hold his land of his Lord by an intire annual service, as a Spurre, Horse, or the like, and after sels parcel thereof to another; in this Case the alienee shall hold by the same intire service, because such intire service cannot be apportioned, and the land is severed by his owne Act: so also if in such Case the Lord purchase parcel of the tenancy, such intire services are gone, in like manner as if the Lord had released his Seignory in part of the tenancy; because he hath discharged part of the land by his own Act. Co. l. 6. 1. b. 3. in *Bruertons* Case.

Journeys accounts.

51 When a writ abates by default of the Clerke, as for false Latin, variance, or want of forme, or else by the Sheriffes fault, for want of good summons, in such Cases the Demandant shall have the benefit of a new writ by Journeys accounts; but if the first writ abate by the default of the Demandant himselfe, as by his mis-information of the name of the Tenant, or of the Towne, &c. there the Demandant shall never have a writ by Journeys accounts. Vide Dier 55. 7. 34, & 35 H. 8. Co. l. 6. 10. a. 2 in *Spencers* Case.

Co-tenants. release land re-lieves charge.

52 If there be two joint-tenants in Fée, and one of them grants a Rent-charge in Fée, and after releaseth to the other: In this Case, albeit to some intent he, to whom the release is made, is in by the first Feoffor, and no degree is made betwixt them, yet as to the grantee of the Rent-charge, he is in under the joint-tenant, that releaseth, and he, that survives, shall not avoid it after the death of him, that releaseth, for he that survives by acceptance of the release hath deprived himselfe of the way and meane to avoid the charge, because Jus accrescendi (the right survivorship) was the sole mean to avoid it, and that right is taken away by the release. Co. l. 9. 79. a. 2 in the Lord of *Abergavenies* Case.

Quare impedit &c.

53 If a Quare Impedit within the six moneths abate for false Latin, insufficiency of forme, or mis-naming of the Plaintiffe or Defendant (if the Plaintiffe confesse it) the Defendant shall not have a writ to the Bishop but the Plaintiffe may have a new writ of Quare Impedit, for that may be the Clerks fault; Nowbeit, in such Case, if the Plaintiffe be non-suit after appearance, discontinue his suit, or be made Knight, hanging the writ, these are peremptory, and thereupon the writ shall abate, and the Plaintiffe shall not have a new writ, because they are done by his own Act: and in such Cases the Defendant shall have a writ to the Bishop, &c. Co. l. 7. 27. b. in Sir *Hugh Portmans* Ca.

Obligation to inform an Arbitrament &c.

54 If a man be by bound obligation with Condition to stand to an Arbitrament to be made before Michaelmas, and before Mich. he discharges the Arbitrator to meddle with it: in this Case, albeit the obligor may by such discharge retract the power so given to the Arbitrator, so as no Arbitrament may be made, yet the obligation is forfeit and is single without a condition, because the obligor by his own act hath made the Condition of the obligation (which was indorsed for his owne benefit, viz. to save him from the penalty of the obligation) impossible to be performed, and (by consequence) the obligation is become single, Co. l. 8. 82. b. 4 *Vinyors* Case

and without the benefit or ayde of any Condition, for that he hath disabled himselfe to performe it: In like manner, if one be bound in an Obligation with Condition, that the Obligor shall give license to the Obligée by the space of 7 years to carrie wood, &c. In this Case also, albeit he give him license, yet if he afterwards within the 7 years countermaund it, or discharge the Obligée, the Obligation is forfeit.

Co.l.8.92.b.3 in *Frances* ca. The like.

55 Where a man be bound in an Obligation to observe the arbitrament of I.S. and I.S. makes the arbitrament. In this Case, if the Obligor neglects to inquire after it to know whether I.S. hath made an arbitrament or no, and for want of such inquiry omits to performe it, the Obligation is forfeit; for the Obligor ought to take notice thereof at his perill, because he hath bound himselfe to it, and in such Case no notice is requisite to be given unto him, as it is held in 1 H. 7. 5.

Ibidem b. 4. Obligation to perform an account.

56 If a man be bound upon Condition to account before an Auditor to be assigned by the Obligée, when he shall be required thereunto, and to pay the arrearages found upon such account: In Debt brought upon such an Obligation the Obligor shall at his perill take notice of the arrearages found before the Auditor: for he having bound himselfe to satisfie them, shall also (without notice) inquire after them to know what they are, because he hath bound himselfe to it, and if he do not his Obligation for such neglect is forfeit: And so it was adjudged per Curiam in 18 E. 4. 18, & 24. And there Brian, Vavasor, and Catesby, Justices agréed it for Law; and sate it hath been formerly resolved in the B. R.

Co.l.8.136.a 1 in Sir *John Nedhams* Ca. Obligation released by making the Obligor Executor, &c.

57 A Commission of Administration granted by the Bishop to the Obligor shall not extinguish the Debt, but the Debt shall remaine: Howbeit if the Obligée make the Obligor his Executor, this is a release in Law of the Debt, because it is the Act of the Obligée himselfe, and with this accords 8 E. 4. 3. & 21 E 4. 2. b. So likewise, if a Feme obligée take the obligor or one of the obligors to husband, this is a release in Law of the debt, because it is by the Act of the obligée her selfe. and with this accords 11 H. 7. 4. & 21 H. 7. 29.

Co l.9,10.a.3. *Downans* Ca. A subsequent Indenture may limit of a precedent recovery.

58 If a recovery be suffered without consideration or limitting to what uses, it shall enure to the use of the recovery and his heirs, unless thereby the recoverée may afterwards by a subsequent instrument direct other uses thereof, and that shall enure by way of estopel against the recoverée and his heirs: for, albeit by such a recovery the use is vested in the recoverée, yet such a declaration by a subsequent indenture, shall devest it, because the covenant thereof is the recoverées owne Act.

Co.l.9.18.a.3. *Anne Bedingfields* Case. Dower, detainer of Charters.

59 In a writ of Dower the heire of the Baron may plead detainer of the evidences, howbeit if the heire have delivered the charters to the Feme he shall not plead detainment thereof: because the Feme hath them by his owne Act.

Co.l.9.39.b.1 *Henshoes* Ca. An Ordinary sued.

60 The Ordinary or his Deputies or Commissaries may seise the goods of the person deceased without being questioned for the same: yet if they medled with the goods and payed not Debts, an action lay against them at the Common Law before the Statute of Westm. 2. 19. which (indeed) is nothing else but an affirmance of the Common Law.

Co.l.11.5.b.3. in Sir *John Heydons* Case. In Trespass the Plaintiffe confessing writ abates.

61 In Trespass against two, if the Jurors find one guilty at one time, and the other at another time, there several damages may be taxed: but if the Plaintiffe himselfe confesse, that they committed the Trespass severally, there the writ shall abate: and so observe the diversity betwixt the finding of a Jury, and the confession of the party, because this is his owne Act, but that the Act of the Jurors.

F.N.B.11. c. Distresse for more Rent then is due justifiable.

62 If there be Lord and Tenant, and the Tenant payes the Lord a greater Rent, then is due to him, and that voluntarily without co-

ercion

herſion of diſtreſſe: here, the Lord having gained ſeiſin of ſo much Rent, may diſtraine the Tenant for ſuch ſurpluſſage of Rent, and the Tenant cannot ſpoile the Lord in his avowry, becauſe of the ſeiſin, which the Lord had of ſo much Rent: Howbeit he may have remedy by the writ of Ne injuſte vexes, grounded upon the Statute of Magna Carta cap. 10. but before that Statute he had no remedy, as it ſeemes.

ror none by mittance.

63 In a writ of Entry ſur diſſeiſin, if the original writ wants theſe words, Quam clamat eſſe Jus & hæreditatem ſuam, it is error, yet if the Tenant admit the writ, and pleads to the action and loſeth, he ſhall not aſſigne this default in the writ for error, becauſe he hath admitted the writ by his plea: So likewiſe in a writ of detinue of Charters, if the Plaintiffe in his Count declare not the certainty of the land, it is a juſt cauſe of error; yet if the defendant admit the Count and pleads to the Action and loſeth by judgment in a writ of error ſued by him, he ſhall not Aſſigne this default in the Count for error, becauſe he hath admitted it for good by his Plea: Tamen quære. F.N.B.21. E

ſentment in Advow-n.

64 A man may have an Aſſiſe of darrein preſentment, albeit neither he nor his Anceſtors preſented to the laſt avoidance; As if Tenant for life or years, or in Dower or by the courteſie ſuffer an uſurpation of the Church, &c. and die, he in reverſion, that is heire to the Anceſtor that laſt preſented ſhall have an Aſſiſe of darrein preſentment, if he be diſturbed; But if a man preſents and after grants the Advowſon for life to another, who ſuffers an uſurpation (or two, or three uſurpations) and dies; In this Caſe, at the next avoidance he in the reverſion ſhall not have an Aſſiſe of darrein preſentment, if he be diſturbed to preſent, becauſe the Leſſee was in by his own Act: Howbeit his heire may have it, but that is by the proviſion of Weſt. 2. cap. 5. So likewiſe if a man preſent to an Advowſon, and after let it for term of years, and then the Church becomes void, and the Tenant for years preſents, and after the Incumbent dies; and the Leſſor preſents and is diſturbed; in this Caſe it ſeemes the Leſſor ſhall not have an Aſſiſe of darrein preſentment, cauſa quâ ſuprà: And the termor for years preſented in his own right. F.N.B.13. q.

onative.

65 If a man hath a Chappel or Chantery Donative, and he preſents once to the Ordinary his Clerke to that Chappel or Chantery; In this Caſe, he ſhall never make Collation afterwards, but he ought to preſent to the Biſhop, and if he preſent not within ſix moneths, the Ordinary ſhall have advantage of the lapſe. F.N.B.35. E

is utrum.

66 If a Parſon receive Rent or fealty of the Tenant for the land alienes by his Predeceſſor, he ſhall not have a juris utrum during his life, but his Succeſſor may have it. F.N.B.50. a.

ognisance harged.

67 If the Recogniſor enfeoffe a ſtranger of one parcel of the land charged, and likewiſe enfeoffe the Recogniſee of another parcel thereof, and afterwards the Recogniſee ſues execution againſt the Recogniſor and the other feoffee; In this Caſe, the feoffee ſhall have an Audita querela againſt the Recogniſee, and thereby diſcharge his land, becauſe the Recogniſee hath diſcharged his parcel of the land by his owne Act. F.N.B. 104. n. & 105. c.

arrantia s, and her.

68 If a man be impleaded in any Action, in which he may vouch the party, againſt whom he hath a warranty, in ſuch Caſe, he ſhall not have a warrantia cartæ againſt him, but he ought to vouch him to warranty, and if he vouch him not in ſuch Action, he ſhall never after have any action of warrantia cartæ againſt him to maintain his title. F.N.B. 134. i.

69 If

F. N B. 142. k. 69 If there Lord and Tenant, and the Tenant make feoffment by colluſion, and the Lord accept the ſervices of the feoffee; In this Caſe, the Lord ſhall not afterwards have the wardſhip of the Tenants heir, nor averre the Colluſion. Wardſhip. Colluſion.

F. N. B. 144. o. 70 If a man be intitled to have a writ of Eſcheate, and he accepts the homage of the Tenant; in this Caſe, he ſhall not have a writ of Eſcheate againſt him afterwards, becauſe he hath accepted him for his Tenant; So alſo it ſeemes reaſonable, if he accept fealty of him, that in ſuch Caſe alſo he ſhall not have a writ of Eſcheate: Howbeit, it is not ſo of Rent; becauſe the former are ſolemne ſervices, which the law reſpects more then Rent. Vide ſuprà Max. 91. Pl. 19. Acceptance barres. Eſcheate.

Pl. Co. 66. a. 2. in *Dive* and *Maninghams* Caſe. 71 When a man demurres, he is to do it generally, and not upon any ſpecial matter; for otherwiſe he is tied up to that ſpecial matter, and cannot take advantage of any other error or default in the declaration or other pleading: And therefore in Dive and Maninghams Caſe in the Commentaries, where the Defendant concludes, unde ex quo ſcriptum prædictum non fuit factum ſub tale conditione, quali per Statutum fieri deberet, & petit judicium. Here, this ſpecial concluſion hath ſo ſtraightned the Defendant, that if the obligation were void for any other cauſe, then what is mentioned in the concluſion, the Defendant could not have benefit thereof by Order of Law: So alſo in 34 H. 6. (which is there alſo quoted) where one deviſeth a reverſion of a Tenant for life to another in fee, per nomen omnium terrarum & tenementorum, quæ in manibus le Deviſor ad tunc fuerunt, and the heire of the Deviſee brings an Action of waſte, reciting in his count the ſpecial grant, ut ſuprà. And the Defendant ſaith, ex quo pro narrationem prædictam apparet, that the Deviſor did not deviſe the reverſion, but by the words, ut ſuprà, and the Tenant for life then held the tenements, and that nothing of the reverſion by the general words paſſeth to the Deviſee, and ſo he demands judgement, &c. And thereupon the Plaintiffe alſo demurred: And there it was held, that in as much as the Defendant had demurred in a point in ſpecial, and hath reherſed the cauſe of his demurrer, that if there were any other matter in the declaration, whereof the Defendant might have advantage, he could not take any benefit or advantage thereof. Pleading ſpecial demurrer.

Pl. Co. 84. b. 3. in *Partridge*, and *Strange*, & *Crokers* Caſe. 72 In a count or declaration, if the Plaintiffe recite a Statute, which he needs not do (being a general Statute, whereof the Juſtices are bound to take conuſance) in ſuch Caſe, if he miſ-recite it (as in the date or otherwiſe) his count ſhall abate; for though it was not requiſite to recite it, yet he making uſe thereof by way of recital, he ought to recite it as in truth it is; becauſe then he hath grounded his action upon the Statute by him recited, where it appeares to the Court Judicially, that there was no ſuch Statute at that time, and ſo he hath abated his count by his own ſhewing; &c. Count abates by miſ-recital.

Co. Inſt. p. 1. 207. a. 2. 73 If ſeofment be made upon Condition, that the feoffor ſhall pay a certaine ſum of money at ſuch a day, &c. if tender of the money be made accordingly, and the feoffee refuſe to receive it, by this the feoffor and his heires may enter, &c. And then the feoffee is without remedy to recover the money at the Common Law; becauſe it was his folly, that he would not receive it, when he might: So if an obligation of 100 l. be made with Condition for the payment of 50 l. at a day, &c. and at the day, the obligor tender the money, and the obligee refuſe it: In this Caſe, albeit in an Action of Debt upon the obligation the 50 l. may be received, becauſe it is ſtill a duty and parcel of the obligation, and the obligee hath remedy by Law for the ſame, according to the Rule; Liberata pecunia non liberat offerendum; yet if the Defendant Tender and refuſal.

dant plead the tender and refusal (wherein he must also say, uncore prist, and tender the money in Court (if the Plaintiffe will not then receive it, but take issue upon the tender, and the same be found against him, he hath lost the money for ever, because he hath made two refusals, when he might have had it.

74 C. purchaseth a Copi-hold of A. to him his wife and their heires for their lives, A. lets the franck-tenement of the same by Deed indented to B. for his life reserving Rent, and livery and seisin is made accordingly: Afterwards A. levies a fine sur conusance de droit come ceo, &c. to C. of the same land, and C. accepts the Rent of B. In this Case it seemes, that by the acceptance of the Rent of B. the Copi-hold of C. is gone; So if a Disseisor make a lease for life reserving Rent, and after grant the reversion to the Disseisee, and he accept the Rent of the Lessee, he shall never after oust him; Quod fuit concessum per quosdam. Dier 30. 107. 28 H. 8.

75 One of the Clerkes of the Chancery was sued in the C. B. and proces continued till the exigent, and the Defendant (who was the Clerke) sues a supersedeas to the Sheriffe, quia improvidè, and after he sues a writ of privilege out of the Chancery directed to the Justices of the B. reciting the privilege of Chancery and requires the Justices to surceasse: In this Case, the privilege was dis-allowed and the Clerke put to answer, because the Court was lawfully seised of the plea by the Act of the Defendant himselfe: for in as much as he sued out the supersedeas quia improvidè, he thereby affirmed the jurisdiction of the Court for that every, supersedeas quia improvidè recites the Defendants appearance in Court by an Attorney, and names him, and therefore it was his own default: But if he had sued such a writ (notwithstanding the exigent) the privilege had been allowed him, and then after the writ of privilege come to the Justices, they ought to have sent a special supersedeas to the Sheriffe of the Out-lawry, reciting the privilege: And this resolution agreed with Presidents shewed in Court. Dier 33. 18. 28, & 29 H. 8.

76 In Dower, the issue was Ne unque seisie que Dower luy puit, and a Deed of feofment made unto the Baron was by the Demandant given in evidence to the inquest, and produced in Court; whereunto it was answered, that before the feofment the Baron was seised of land to him and his former wife in special taile, and that after he made discontinuance, and re-took the Estate in fee by the feofment aforesaid, and of such Estate died seised, whereby the heire, who is Tenant in taile, is remitted, and therefore the second Feme could not be endowed; in this Case, albeit the matter alleadged might have avoided the Dower, if it had been specially pleaded, yet here the issue being onely ne unque seisie, &c. the Justices were of opinion, that the Jury ought to find for the Demandant, &c. Dier 41. 1. 30 H. 8.

77 If A. plant Cones in his owne ground, which increase to such a number, that they destroy the land of B. next adjoyning; in this case, B. cannot have an action upon the case for the damage he sustaines by them; for the property of them remaines no longer in A. than they remaine within his Warren, and when they come upon the land of B. he may lawfully kill them, because then they are his if he can catch them, and it is his own fault, if he do not take them. Co. lib. 5. 104. b. *Boulstones Ca.*

78 This Parlyment teacheth us, that it is not safe for any man (be he never so learned) to be of Counsell with himselfe in his own Case, but to take advice of other learned men, and the rather because the philautia and self-opinion, which is in man by nature, so obscureth his understanding, that he can hardly give a right judgement of things, Co. Inst. p. 1. 377. b. 4.

that

that concerne himselfe Non prosunt dominis, quæ prosunt omnibus artes; and in suo quisque negotio habitior est, quam in aliena: And therefore in the new inventions of Justice Richel (an Irish-man) in R. 2. time, and of Thirming in H. 4. time, there were found many imperfections, and Richel was overthrowne in an Action upon the Case by his owne shewing in 2 H. 4. fol. 11. vide Co. l. 1. 88. a. 2. in Corbets Case.

Litt. §. 720.

Dier 69. b; 36 5 E. 6.

79 A man enfeoffs two upon Condition, that the feoffées before a certaine day shall make an Estate again to the Feoffor for term of his life, the remainder over in fee to a Stranger, one of the feoffées makes an Estate accordingly; in this Case, albeit the Condition was intire, yet it was conceived by many, that it is good for the moity, because the party to the Condition hath dispensed with the Condition by his acceptance of the Estate. A Condition severable.

Dier 140. Pl. 43. 3, 4 P. M.

80 If Lessée for years by indenture accept of another lease (though it be but by parol) to begin immediately, this is a surrender in Law of his first lease, because by his acceptance of the last lease, he admits himselfe out of possession, and that the Lessor hath lawfull power to demise him a new one. Vide Dier 279. 11. A surrender in Law.

Dier 144. 57. &c. 3, 4 P. M.

81 The Statutes of 27 E. 3. 8. and 28 E. 3. 13. of the Staple were made for the benefit and in favorem alienigenarum for trials per medietatem linguæ, yet if an Alien be Plaintiffe, and omit the advantage of requesting it, whereupon a generall venire facias issueth out and is returned, some say, that thereby he hath slipt his time, and that the Judges are not bound ex officio to award any such speciall writ by reason of the said Statute, for it appeareth not unto them by the Record, quòd una pars sit alienigena, and by the Common Law the trial was by all English: Howbeit Treason shall not be tried per medietatem linguæ. Trial per medietatem linguæ.

Dier 158. Pl. 32. 4, 5 P. M.

82 If a Guest come to a Common Inne to loage there, and the Host saith, that his house is already full of Guests, and is not willing to admit him, and the Guest saith, that he will make shift amongst the other Guests, and is there robbed of his goods; in such Case the host shall not be charged therewith, because he refused him, but the Guest shall beare the losse himselfe. Vide Dier 266, 9. A Guest in bed.

Dier 164. 57. 4, 5 P. M.

83 If a man hath goods to value of 100 l. and is in Debt 20 l. and by his will gives his wife the moity of all his goods, to be equally divided betwixt her and his Executors, and then he makes Executors and dies; in this Case, if the Executors discharge the Debt to the Creditor by sale or other satisfaction out of the goods themselves, the Feme shall have onely the moity of the residue, viz. 40 l. but if they pay the Debt by their owne money, the Feme shall have the moity of all the goods viz. to the value of 50 l. so as the Executors have assets. Goods bequeathed.

Dier 200. 61. 3 Eliz.

84 The King demiseth a Messuage rendring Rent, and afterwards the lessée takes a patent of the office of the keeping of the said house, this seemes to be a surrender in law of the lease. Surrender.

Dier 226. 40. 6 Eliz.

85 In an Ejectione firmæ against two, one appeares and pleads the generall issue, and processe is continued against the other: who also appeares, and pleads entry of the Plaintiffe into the land since the last continuance, in abatement of the writ, whereupon the Plaintiffe demurres; afterwards the issue above was found for the Plaintiffe, yet he shall not have judgment; for by the demurrer he hath confessed the entry, which abates his own writ. Ejectio firmæ.

Dier 261. 28. 9 Eliz.

86 The rasing of a lease in any place (though not material) by the lessée himselfe makes the lease void. Rasing.

Hob. 119. *Wood and Budden*

87 In Trespas in 8 acres of Pasture in Tollard Royall, the Defendant pleads, that W. E. of Salisbury was seised of Cranborne Chase, And Trespas.

And ſo preſcribes in liberty of Chaſe, and that the ſaid Chaſe did extend it ſelfe as well in and through the ſaid 8 acres, as the ſaid Towne of Tollard Royal, and juſtifies the Treſpaſſe for uſe of the chaſe: The Plaintiffe maintains his declaration, and traverſeth, that the Chaſe extends not it ſelfe as well to the 8 Acres, as to the whole Towne: And this iſſue being found for the Plaintiffe, it was moved in arreſt of judgment, that this iſſue and Verdict were faulty, becauſe if the Chaſe did extend to the 8 Acres onely, it was enough for the Defendant, and therefore the finding of the Jury, that it did not extend as well to the whole Towne, as to the 8 Acres, did not conclude againſt the Defendants right in the 8 Acres, which was onely in queſtion: But it was anſwered by the Court, that there was no fault in the iſſue, much leſſe in the Verdict, which was according to the iſſue; but the fault was in the Defendants plea, who takes the exception, for he put in his plea more then he needed, viz. the whole Towne, which being to his owne diſadvantage, and to the advantage of the Plaintiffe, there was no reaſon for the Plaintiffe to demurre upon it, but rather to admit as he did, and ſo to put it in iſſue: And ſo judgment was given for the Plaintiffe.

118 When ſeveral remedies are given, the party, to whom the Law giveth them, hath thereby alſo election given him to take which he will.

Lit. §. 249. Co. Inſt. p. 1. 145. a. b.

1 If a man grant by his deed a Rent-charge to another, and the Rent is arrere, the grantee may chooſe, whether he will ſue a writ of Annuity, or diſtraine for the Rent arrere: but in this Caſe he ſhall but chooſe once; for if he recover in a writ of Annuity, he ſhall never after diſtraine, or if the diſtraine and avowry in Court of Record, he ſhall never after bring a writ of Annuity; becauſe an avowry in a Court of Record, being in nature of an Action, is a determination of his election before any judgment given. Co. lib. 145. b. 4.

Electio ſemel facta & placitum eſtatum non patitur regreſſum.
Quod ſemel placuit in electionibus amplius diſplacere non poteſt.

Co. lib. 146. a. 1

So if a Rent-charge be granted to A. and B. and their heires, A. diſtraineth the Beaſts of the grantor: who ſueth a replevin, A. avoweth for himſelfe and maketh conuſance for B. A. dieth and B. ſurviveth: Here, B. ſhall not have a writ of Annuity; for in that Caſe, the Election and avowry for the Rent of A. barreth B. of his election to make it an Annuity, albeit he aſſented not to the avowry. And here, is a diverſity to be obſerved betweene the Caſe above-ſaid where the grantee makes it either real or perſonal at his Election, real, when he diſtraines, or perſonall, when he brings his writ of Annuity, and where a man may have Election to have ſeveral remedies for a thing that is meerely perſonal or meerely real from the beginning: As if a man may have an Action of account or an Action of Debt at his pleaſure, and he bringeth an Action of account, and appeare to it, and after is non-ſuit, yet may he have an Action of debt afterwards, becauſe both actions charge the perſon: The like Law is of an Aſſiſe, and of a writ of entry in nature of an Aſſiſe, and the like.

Co. lib. 202. a. 1

2 If a feoffment be made of a mano upon Condition to pay a certaine Rent, the Demand ought to be made at the Mes-gate, or at ſome high way tending through the Mes, or other moſt notorious

place there: And if one place be as notorious as another, the feoffor hath election to demand it at which he will, and albeit the feoffée be in ſome other part of the land ready to pay the Rent, yet that ſhall not avail him, & ſic de ſimilibus.

Co.lib.210.a.1 Litt. §.339.

3 If upon a Mortgage the money be limited to be payd to the feoffée, and before the day of payment he make his Executors, and die, in this Caſe the Mortgagor ſhall pay it to the Executors, albeit they be not named, or if it be limited to be paid to the Mortgagee or his heirs, then, if he die, it ought to be paid to his heire, becauſe named; but if to his heires or executors, the Mortgagor hath election to pay it to either; So likewiſe if the Condition be to pay it to the feoffée his heirs or aſſignes, and the feoffée make feoffment over, it is in the election of the feoffor to pay the money to the firſt or ſecond feoffée, at his pleaſure, and ſo if the firſt feoffée die, the feoffor may pay the money either to the heire of the firſt feoffée, or to the ſecond feoffée at his election; for the Law will not enforce the feoffor to take knowledge of the ſecond feoffment, nor of the validity thereof, whether the ſame be effectual or not, but at his pleaſure. Payment of Mortgage money.

Litt. §.341. Co.lib.211.b.2

4 If feoffment in fée be made reſerving Rent, and for default of payment a re-entry; this is a Rent-ſecke, and in this Caſe, if the feoffor be once ſeiſed of the Rent, which after is denied him, it is at his election whether he will have an Aſſiſe of Novel diſſeiſin for the rent arrere, or enter for the Condition broken: but after a recovery in Aſſiſe he cannot have recourſe to his re-entry, becauſe by bringing the Aſſiſe he affirmes the continuance of the Eſtate. An Aſſiſe, or entry.

Litt.§.454. Co.lib.268.b.1. & 312.a.1.

5 Before the Statute of 21 H.8.19. the diſtreſſée might compel the Lord to avow upon him, but ſince that Statute if the Lord diſtraine upon any of the Lands and Tenements holden, &c. he may avow, &c. upon the ſame Lands, &c. as in Lands, &c. within his fée or Seignory, &c. without naming of any perſon certaine, and without making avowry upon a perſon certaine, and therefore at this day the Lord hath his Election, either to avow according to the Common Law: or by force of the ſaid Statute, as by the word may in the ſame Statute is imported. Avowry alias or by Sur.

Littl.§ 478. Co.lib.278.b.3

6 If a man be diſſeiſed by an Infant, who aliens in fée, and the alienée dies ſeiſed, and his heire enters, the diſſeiſor being ſtill within age: In this Caſe, it is in the Election of the Diſſeiſor to have a writ of dum fuit infra ætatem, or a writ of right againſt the alienée: or otherwiſe he may make his entry into the land without any ſuit or recovery: And ſo it is to be obſerved, that many times the Law doth give a man ſeveral remedies and of ſeveral kinds, as in this Caſe by action and by entry, by action, either by writ of right, or dum fuit infra ætatem. Several remedies by aſſiſe or entry.

Littl.§.496, 497, & 478. Co. Inſt. p.1. 286. b.1.

7 When a man hath ſeveral remedies for one of the ſame thing, be it real perſonal or mixt, albeit he releaſeth one of his remedies, yet he may uſe the other; So where a man may enter into lands, and alſo have an Action real given him by the Law to recover them; In this Caſe, if the Demandant releaſe to the Tenant all manner of actions real, yet the Demandants entry is not thereby taken away, becauſe nothing is releaſed but the Action: And ſo it is alſo of things perſonal, as if a man wrongfully takes my goods, albeit I releaſe to him all actions perſonals, yet I may by Law take my goods out of his poſſeſſion: In like manner if I have any cauſe to have a writ of detinue of my goods againſt another; here, albeit I releaſe unto him all Actions perſonals, yet I may by Law take my goods out of his cuſtody, becauſe no right of the goods is releaſed, but onely the Action. A remedy remaine after a releaſe.

8 If

Rent di- or an

8 If one hold of me by Rent-ſervice, which is a ſervice in groſſe, and not by reaſon of my Manno, and another, that hath no right, claimes the Rent and receives it of my Tenant by coherſion of diſtreſſe o otherwiſe, and diſſeiſeth me by taking the Rent; albeit ſuch a diſſeiſo die ſo ſeiſed in taking the Rent, yet after his death it is at my election, either to diſtraine fo the Rent, o taking him to be a diſſeiſo to have an Aſſiſe againſt the perno of the profits. Litt. § 588, & 589.

me or a-

9 If an Abbot, Biſhop, o Huſband in the right of his Wife, ſeiſed of a Rent, o any other Inheritance, that lies in grant had alienes, it was in the Election of the Succeſſo o Wife (after the death of her Huſband) to claime the Rent, &c. o to bring an Action; fo ſuch alienation did not worke a diſcontinuance, and ſo it is alſo (by conſtruction) of the Statute of Weſt. 2. cap. 1.) in Caſe of Tenant in Taile. Co. lib. 3 27. b. 2

tes waiv- by Feme rt.

10 If Lands be given to the Huſband and Wife and their heirs, the Huſband makes a feoffment in fee, the feoffee giveth the land to the Huſband and Wife, and the heirs of their two bodies, the Huſband dieth; In this Caſe, the wife may elect which of the Eſtate ſhe will, fo both Eſtates are waivable, and her time of Election and power of waiver accrewed unto her firſt after the deceaſe of her Huſband. Co. lib. 357. a. 2

ther of r heires.

11 In veraigning a warranty againſt heires in Gavelkind the eldeſt may be vouched as heire to the warranty, and the other ſonnes alſo in reſpect of the Inheritance deſcended unto them: So likewiſe the heirs at the Common Law, and the heire of the part of the mother may be both vouched: yet in both theſe Caſes the heire at the Common Law may be vouched alone at the election of the Tenant. Co. lib. 376. a. 4

veyance ſeveral ds.

12 When a man conveys a thing to another by ſeveral wo ds which will admit ſeveral acceptions, the intereſt of the thing granted paſſes preſently, and the grantee, his heires, o executo s may make their election when and in what manner they will take it: And therefore if a man ſeiſed of a Manno part in demeſne and part in leaſe demiſeth, bargaines, and ſels it to another fo yeares, the Leſſee may make his election, whether he will take it by demiſe at the Common Law, o by bargaine and ſale: So alſo in Sir Rowlands Heywards Caſe in the ſecond Repo t it was ſaid, if a man give two Acres of land, habendum the one acre in fee and the other in taile, and he alien both, and hath Iſſue and dies, in this Caſe, the Iſſue may bring a Formedon in deſcender, fo which Acre he pleaſeth; fo the election was not determined by the grantees death becauſe the Eſtate paſt preſently by the liberey, and the iſſue takes by diſcent. Co. l. 2. 35. b. 3. & 36. b. 4. Sir *Rowland Heywards* Caſe.

heires E- lion.

13 If a feoffment be made to two, and the heires of one of them, and he that hath the fee dies, and after he Tenant fo life dies, in this Caſe, the heire hath election to have a Mordanceſter, o a ſcire facias, o a Formedon in remainder at his pleaſure. Co. l. 2. 61. a. 3 *Wiſcots* Caſe.

e Lords E- lion.

14 If there be Lo d and Tenant by Knight-ſervice, and the Tenant die his heire within age, here the Lo d hath election either to ſeiſe the Ward, o to diſtraine fo the ſervices and waive the Ward. Per Popham. Co. l. 2. 68. a. 4. in *Tookers* caſe

ction of gs in

15 If Tenant in taile of a Rent, Advowſon, Tithes, Common, o other ſuch things, which lie in grant, grants them by deed in fee and dies, the grant is not abſolutely determined by his death, but it is at the Election of the Iſſue to make the grant voidable o void at his pleaſure; fo if he bring a Formedon fo the Rent, &c. he makes the grant voidable, but if he diſtraine fo the rent, o claime it upon the land, he thereby determines his election and makes it void. Co. l. 3. 84. a. 4. in the Caſe of *Fines*.

16 If

Co. l. 4. 81. a. 1 in *Nokes* Case

16 If a man ſeiſed of land in fee lets the ſame for life reſerving Rent and beſides binds himſelfe and his heires to Warranty, here the expreſſe warranty takes not away the Warranty in Law; for if he in reverſion grant over his reverſion, and the Leſſee attorn, and after is impleaded, it is at his Election whether he be will vouch the grantee by the warranty in Law, or the Leſſor by the expreſſe warranty. Vide 20 E. 3. Tit. Counterplea de Garrantie 7. Election of Warranty.

Co. l. 4. 82. a. 4. in Sir *Andrew Corbets* Case.

17 If a man deviſeth demiſeth or limiteth by way of uſe land to another untill 800 l. be raiſed for the performent of his daughters, any dies, and the heire, or he in Reverſion or Remainder enter upon him, to whom the Land is deviſed, demiſed, or limited, as aforeſaid; and expulſe him; In this Caſe, it is in the Election of the perſon ſo expulſed, either to bring his Action and recover the meane profits, which ſhall be accounted parcel of the ſumme, or he may re-enter and hold the Land, until he may levie the whole ſumme, and the time, in which he was ſo expulſed, ſhall not be accounted parcel: There is the ſame Law in other Caſes, viz. of Tenant by Elegit, Statute Marchant, Statute Staple, Guardian, who holdes over for the double value; If he in the Reverſion, who is to have the Lands, outs them, they have ſuch Election, as aforeſaid, either to hold over, or to bring their action. Election of entry or action.

Co. l. 4. 93. a. 4 in *Slades* Case

18 For money due upon the ſale of goods, or the like, it is in the election of the Plaintiffe to bring an Action upon the Caſe, or an Action of Debt, 1 For the greater number of Preſidents and Judgment in the point. 2 Every contract executory juſtly implies an Aſſumpſit. 3 Recovery in an Action upon the Caſe barres in Debt. 4 It is the more ſpeedy Action, for if the payment be at ſeveral dayes, no debt lies till the laſt, this lies upon the firſt breach. 5 It is a former action in the Regiſter, and may lie, where Debt lies, as appeares there, Fol. 97, 98, 100, & 103. See Dier 20. 118. 28 H. 8. Gore & Woddeys Caſe. Election of Action.

Co. ib. 94. b. 4. in *Slades* Case

19 When the Regiſter hath two writs for one of the ſame Caſe, it is at the election of the party to take and uſe either the one or the other, and it appeares by divers Caſes in the Regiſter, that an action upon the Caſe will lie, albeit the Plaintiffe may have for the ſame thing another formed Action in the Regiſter: F. N. B. 94. g. & Regiſter 103. b. So if a man hath a Mannor within an Honor, and hath a Leet within his Mannor for his owne Tenants, if he or his Tenants are diſtrained by the Lord of the Honor to come to the Leet of the Honor, he that is ſo diſtrained may have a generall writ of Treſpas, or a ſpecial writ upon his Caſe; So if an Officer take toll of him, who ought to be quit of toll, he ſhall have a generall writ of Treſpas, or an action upon his Caſe, as appeares by Fizt. ibid. If a Prior or other Prelate be riding upon his journey, and one diſtraines the horſe, upon which he rides, when he might diſtraine other of his goods, in this Caſe, he may have a generall action of Treſpas, or an action upon his Caſe, as appeares by the Regiſter fol. 100. & F. N. B. 93. h. So if a Sheriffe ſuffer one in execution upon a Statute Marchant to eſcape, the Conuſee may have an Action of debt, or an action upon the Caſe, as appeares by the Regiſter 98. b. & F. N. B. 93 B. C. So if a man ouſt the Executors of his Leſſee for yeares from their terme, they may have a ſpecial writ upon their Caſe, as appeares F. N. B. 92. g. Regiſter 97. and yet they may alſo have an Ejectione firmæ, or Treſpas: for in all Caſes, when the Regiſter hath two writs for one and the ſame Caſe, it is at the election of the party to take either the one or the other. Election of Action.

20 Where

26 Where a Prior is the Kings debtor, and ought to have tithes of another spiritual person, he may chuse either to sue for subtraction of his tithes in the Ecclesiastical Court, or in the Exchequer, and yet the persons and matter alto was Ecclesiastical. Co.l.5.p.1.16. a. 2. in the K. Ecclesiastical Law.

21 For offences committed in the Leet it self, as refusing to take the oath of Constable, or the like, the Lord may bring his action of Debt, distrain goods and sell them, or distrain and impound them at his Election. Co.l.8.41.b.2 in *Griesties* ca.

22 If the Treasurer and Under-Treasurer of the Exchequer give power to one by an unlawful warrant to receive money of one and more of the Debtors of that Court, it is in the Kings Election to charge the party that receives them, or (in case he die) his Executors, or otherwise to charge the Treasurer and Under-treasurer, that issued out such unlawful warrant. Co.l.11.90. b.4.and 92. b.4.Sir *Walter Mildmayes* ca. cited in the E. of *Devons* Ca.

23 If a man be ousted of his Stewardship of a Mayor, so as another executes the place taking the profits thereof, for his restauration thereunto he may either bring an Action at the Case, or otherwise an Assise at his Election. Co.l.9.51.a.1 the Earle of *Shrewsburies* Case:

24 If the Ancestor be seised, and one of the Heires enter into all the Lands and deforce the rest: In this case, the other Heires may have a writ de rationabili parte, or a writ of cuper obit at their Election; Likewise for Lands in Gavelkind, if one Brother enter into all the lands, and oust his Brothers, here also (if the Ancestor dies seised) the other Brothers may sue a writ de rationabili parte, or a nuper obiit, at their Election. F.N.B.9.g.

25 If there be Lord and Tenant, and the Lord incroacheth other services then such as are due to him, as Voutage, Escuage, or the like: In this Case, the Tenant may avoid such incroachment in Avowry made by the Lord for such services, because the Tenant may traverse the manner of the Tenure, as to say that he holds of the Lord by fealty and xxi. Rent onely, without that, that he holds by Voutage, Fealty, and Rent in manner and forma as the Avowry is made; Or otherwise he may bring a writ of Ne injuste vexes, if he please, at his Election. F.N.B.10.h.

26 If a man recover in a writ of Right of Advowson, at the next avoidance he may present, and shall have a Quare impedit without assigning any presentment in himself, or his Ancestors, but shall declare upon the Record, or otherwise he may have a scire facias upon such recovery. F.N.B.36.a.

27. If a man recover by an Action tried against a Parson, Lands and Tenements by Verdict, and the Parson pray not in Ayde of the Patron, and Ordinary: In this Case, if it was a false Verdict, the Successor may have a Juris utrum, or an attaint at his Election. F.N.B.49.r.

28 If a Parson lose by action tried, or by default, his Successor may have a writ of Error, or an attaint at his Election. F.N.B.49.g.

29 If a Parson, Vicar, Master of an Hospital, or the like, have a pension out of another Church, which they and their Predecessors have had time out of mind, it is at the Election of such Parson, Master &c. to sue for such pension in the Court Christian, or by writ of annuity at the Common Law, for in that case, if they sue for it in Court Christian, and the other party purchase a prohibition, &c. upon the suggestion that they shall have consultation. F.N.B.51.b. F.N.B.81.d.

30 For Ayde ad filium suum militem faciendum vel ad filiam maritandam; the Lord may distraine his Tenant and make avowry, or bring a writ auxilio, at his Election.

F. N. B. 98. c. 31 If Baron and Feme lofe by default the land of the Feme; here, if the Baron die, the Feme may have a writ of right, or a Cui in vita, at her Election. — Deceit or ci in vita.

F.N.B. 95. g. 32 A writ of deceit may iſſue out of the Common Pleas or Chancery at the Election of the Plaintiffe, until a mannlefe by default have in a præcipit quod reddat in the Common Pleas, the Tenant ſhall have a writ of deceit, (alledging that he was not ſummoned, or the like) out of the Common Pleas, or out of the Chancery at his Election. — A writ of deceit out of Com. Pleas Chancery.

F.N.B. 104. f. 33 Where the Recognitee purchaſeth a Supersedeas, while which the Recognitee is within regnorant: In this Caſe, the Recognitee may have an audita querela, or otherwiſe may enter and take the Recognitee without any ſuch ſuit, at his Election. — Audita querela.

F.N.B. 122. d. 34 A man may ſue a writ of debt upon a Statute Merchant, Statute Staple, or Recognizance: or otherwiſe, he may ſue execution upon thoſe Statutes, at his Election. — Debt or execution.

F.N.B. 155. d. 35 If Tenant in Maile, Dower, by the Curteſie, or for life lofe by default (where they were not ſummoned, or the like) they may have a writ of deceit, or a Quod ei deforceat, (upon the Statute of W. 2. c. 4.) at their Election. — Deceit or a Quod ei deforceat.

Dier 162. 51. 4, 5. P. M. 36 If a man commence in debt or damages into ſeveral Counties, the Plaintiffe may pray an Elegit in each County for the whole debt or damages, or he may make diviſions of his debt, viz. Quoad decem libras, &c. & quoad alias decem libras, &c. & ſic de cæteris, at his election. Vide M. 17 E. 3. in debt againſt Executors the writs of fieri facias, were awarded into ſeveral Counties for the whole debt: But in Mich. 19 H. 6. Rot. 103. the Plaintiffe for the double damages had three writs of Elegit in three ſeveral Counties for the whole. — Elegit. Diviſion.

Dier 344. 2. 18 Eliz. 37 A man grants a Rent-charge without theſe words per ſe & hæredibus ſuis, and dies, the grantee brings a writ of Annuity againſt the Heire, and after diſcontinues his ſuit and withdraws, and it was adjudged well done, becauſe the Election to make it an Annuity was determined by the death of the Father. — Annuity.

119 *Cujus eſt diviſio, alterius eſt Electio.*

Co. Inſt. p. 1. 166. b. 2. & Litt. §. 245. 1 Upon partition amongſt Coparceners, the eldeſt ſhall have the Election; for ſhe ſhall have Civitiam partem, but if ſhe herſelfe make the partition, ſhe loſeth her priviledge of Election, and ſhall take laſt. — Election by Coparceners.

Heb. 107. the Biſhop of Carliles Caſe. 2 A preſcription, that if an Inhabitant hath five ſheaves of wool; or ſaith, that then the Inhabitant after the ſhearing and binding up of the ſaid five ſheaves without fraud or deceit ſhall truly pay unto the Rector after monition, &c. at the houſe of the Pariſhon houſe of the ſaid Inhabitant, &c. the tenth part thereof, without any ſight or touch of the nine parts by the Rector; is a good preſcription: for it is againſt common reaſon, that any man ſhould judge or divide for himſelfe, and thereby take choice of his own diviſion, againſt the Rule of Litt. §. 245. for the tenth of the tenth depends upon the proportion & proportioning the nine parts thereof: ſo the parſhioner, who is in the nature of an adverſary to the Parſon in this Caſe, to ſet out a part of the tenth, which he only affirmes to be juſt, is to give him meerly power to take as he liſte, and the preſcription were as reaſonable as to ſay plainly, that the parſhioner might ſet out what tithe they pleaſe. — Tithes.

120 *Nemo prohibetur plures defensiones uti.*

1 Where the Tenant or Defendant may plead a general Bar, thereupon the general Bar pleaded, he may give in evidence as many distinct matters to barre the action or right of the Demandant or Plaintife, as he can. Co. Inst. 3. 1. 304. a. 3.

2 Where a special Verdict contains double or treble matter, the Tenant or Defendant may either make choice of one matter, and to plead it to barre the Demandant or Plaintife, or to plead the general Bar, and to take advantage of all, or he may plead to part one of the pleas in barre, and to another part another plea, and the conclusion of his plea shall above mentioned. Co. ibidem.

3 An Executor bringes debt as Administrator, and is barred by plea, that he is Executor, In this Case, he may afterwards bring debt as Executor: For he was barred, as to the action of the writ, to have Debt as Administrator, but not to the Action. Co. l. 5. 33. b. Robinsons Ca.

4 Two men were bound jointly and severally in an Obligation, the one was sued, condemned, and taken in Execution, and (not long after) was the other: Now afterwards the first escaping, the other brought an Audita querela: but it was not admitted: for although the Plaintife might have had his action against the Shiriffe upon the escape, yet untill he be satisfied indeed, the other shall not be enlarged, nor have his Audita querela: because the execution upon the first, that escaped, was not valuable, being without satisfaction. Co. l. 5. 86. b. Blanchfields Ca.

5 If one be barred by plea to the writ, he may have the same writ again: if by plea to the Action of the writ, he may have his right Action: If the plea be to the Action, and he be barred by judgment, confession or verdict, in personal Actions it is a barre for ever, but in real actions he may have a writ of an higher nature, and shall try the same right again, because it concernes his Franktenement and Inheritance: So if one be barred in an Assise of Novel disseisin, yet upon shewing a discent or other special matter, he may have an Assise of Mortdancester, Aiel, Besiel, a writ of Entry sur disseisin of his Ancestor, &c. or the like: And if he happen to fail in any such real action yet may he have (without all) his writ of right, in which the whole matter shall be tryed and determined again; Voucher, Recovery or barre in Assise is a barre in every other Assise and writ of equity in the nature of an Assise; because they are both of the same qualities and of the same nature: So barre in a writ of Aiel, is a barre to a writ of Besiel, Cosinage, because they are amerced one of the same nature: yet in a Formedon in descender, albeit the Demandant be barred by verdict or nonsuit, yet the issue in tail may have a new Formedon in descender; But this is by the constitution of W. 2. c. 2. the Statute, if the Ancestor be barred in a writ of Entry upon a disseisin, by him made to the Tenant, yet the issue shall have a new writ of Entry; For he claimes in not meerly as heire, but per formam doni; And by the Statute he shall not be barred upon a feined alienation of his Ancestor, so long as the Right of the said Inheritance and writ accrues 10 H. 6. 5. and 3 Eliz. 186. Vide Sir Ralfe Rowlies Case. F.N.B. 5. d.

6 In Trespas the Defendant makes title, for that A. W. being seised in fee, leased to him, the Plaintife makes title by discent, and traverseth the lease, and saies; for it may be true, that A. W. was seised, and yet that a discent was cast to the Plaintife, therefore the lease is most material to be traversed: Wherein it seemes, that either the one. Co. lib. 4. 24. Rowles Case.

or the other may be traverſed. So in Treſpas the Defendant pleads, that A. was ſeiſed, who enfeoffed B. who enfeoffed C. who enfeoffed D. whoſe Eſtate the Defendant hath; here, the Defendant may traverſe which of them he pleaſe.

Co. l. 3. 15. b. 4 in Edw. Altham's Caſe.

7 Where a man releaſeth totum Jus generally, all his rights are thereby releaſed, but if the diſſeiſee releaſe to the diſſeiſor omnes actiones, viz. recuperandi ſive proſequendi in judicio, thereby his right of entry is not releaſed: for, when a man hath divers wayes to come to his right, he may releaſe one of them in ſpecial, and yet take benefit of the other, and with this accords Litt. fol. 135. b. & 19. Aſſ. Pl. 3. 19 H. 6. 4. 21 H. 6. 23. 21 H. 7. 23.

By releaſe of actions Entry remains.

Co. l. 9. 23. b. 1 in the Caſe of Avowry.

8 Notwithſtanding the Statute of 21 H. 8. 19. the Lord may at this day avow upon a perſon certain, as upon the firſt Tenant according to the Common Law; For the Statute takes not away the Common Law in that Caſe, but giveth liberty to the Lord to purſue the one or the other.

The Lord may avow, as before the Statute.

Co. l. 9. a. 4. in the Caſe of Avowry.

9 If the Leſſee (or if Tenant peravaile in Caſe of Deſeaſance) be preſent, when the Lord and his Bailiff comes to diſtraine, if nothing be in arrearage, he may well make reſcous, and ſo releaſe himſelfe, as it was reſolved in Bevils Caſe in Co. lib. 4. fol. 8. and divers other Caſes (which lie in the Caſe of Avowry, Co. l. 9. a. 4.) Or otherwiſe, he may have an Action of Treſpaſs againſt the Lord, or Bailiff.

Upon diſtreſs reſcous, or treſpaſs.

F.N.B. 9. g.

10 Vide ſup. Max. 118. R. 24. where parceners or heires in Gavelkind may have a writ de rationabili parte, or a Nuper obiit, being ouſted by one of their Coparceners. See alſo ſupra, Maxime 118. Rou. 24.

Partners.

F.N.B. 21. c.

11 If a man be vouched, and enter into Warranty and lofeth, he may have a writ of Error, and aſſigne the Errors, which have happened between the Demandant and the Tenant, or between the Demandant and the Vouchee: for although he be in reverſion, who ought to be vouched for default of the Tenant for life, or for his faint pleading; here, albeit he be received and plead and loſe, yet may he have a writ of Error, and aſſigne the Errors, that have happened between the Demandant and Tenant, and the Demandant and him, that ſo ought to be received.

Vouchees, Tenants by Curteſie may have a writ of Error.

F.N.B. 99. b.

12 In a precipe quod reddat againſt Baron and Feme, and the Grand Cape: the Baron appeares in proper perſon, and the Feme by an Attorney; who hath not ſufficient warrant, and thereupon Judgment was given upon the default of the Feme againſt Baron and Feme, &c. yet if they were not duely ſummoned, they may bring their writ of Error to reverſe that judgment.

Baron and Feme may have error.

F.N.B. 135. d.

13 If a man may have a Warrantia Cartæ, albeit he may vouch in the Action that is brought againſt him, and if he recover in the Warrantia Cartæ, and afterwards loſe the Action brought againſt him, in which he hath vouched him, againſt whom he hath recovered the ſeiſeiny, then ſhall he have a writ of habere facias ad valentiam, &c. maintainable within 20 years after the recovery to recover in value according to his loſſe.

Recovery in value.

Plow. 96. a. 1.

14 For Dower before the Aſſign may either diſtraine or ſeiſe, and ſo he hath two ſeveral means to come by it.

Herein ſeiſin in value.

121 *Conſenſus tollit Errorem.*

When by conſent no challenge.

1 When in a writ of right the Jury, that are to trie the meere right, are once impanelled by the four Knights with the conſent of both parties, none of the 12 ſo choſen can be challenged, becauſe it is by conſent of parties. Litt. §. 514. Co. Inſt. p. 1. 294 a. 2.

Glebe may be chaunged.

2 If the Parſon of a Church charge the Glebe of his Church by his Deed, and the Patron (having fee-ſimple in the Advowſon) and the Ordinary confirme that grant, ſuch grant ſhall ſtand in force according to the purport thereof; Becauſe done by the joynt conſent of all the parties, that can claime any intereſt in the Advowſon: So likewiſe may the Patron and Incumbent of a Chantery donative charge the lands, upon the ſame reaſon: becauſe the whole intereſt reſides in them, and the Ordinary is not to meddle therewith. Litt. §. 528. Co. ib. 300. a. Litt. § 648. Co. 343. a. Co. 301. a. 4.

Attornment.

3 To avoid many inconveniencies, Attornment was appointed by the Law, which is nothing elſe but the conſent of the particular Tenant to the over-Lords new grant: And therefore it is ſaid in the old Books, Si Dominus attornare poſſit ſervitium tenentis contra voluntatem tenentis, tale ſequeretur inconveniens, quod poſſit eum ſubjugare Capitali inimico ſuo, & per quod teneretur Sacramentum fidelitatis facere ei, qui eum damnificare intenderet. For ſuch conſent of the Tenant is concluſive, and binds the Tenant to pay the purchaſer the Rent, and to perform all other ſervices due to or in reſpect of the land. Co. ib. 309. a. 3

Venire facias, by conſent.

4 In a Ejectione firmæ upon iſſue joyned the Plaintiffe makes ſuggeſtion to the Court, that he, the Sheriffe, and one of the Coroners were of the livories of the Earle of Worceſter, and therefore that he had cauſed the Venire facias to be directed to the other Coroner, and the Defendant alſo confeſſing the ſuggeſtion, the venire facias was allowed accordingly: and upon the trial the Verdict paſſed for the Plaintiffe: Howbeit afterwards, the Court was moved to arreſt judgment becauſe the ſuggeſtion did not containe principal challenge: ſed non allocatur, becauſe the venire facias was awarded ex aſſenſu partium. Co. l. 5. 36. b. 4. in *Baynehams* Caſe. Vide Dier 367. Pl. 40. 21, & 22 Eliz.

Many things conſented.

5 A Common Recovery differs from the judgment and proceeding in other real actions, for this reaſon (amongſt others) becauſe it is had by the mutual conſent of the parties, 39 E. 3. 1. The Demandant and Tenant conſent, that two of the four in a writ of right ſhall be Eſquires, albeit by the Law they ought to be all Knights, and well; becauſe by conſent, 44 E. 3. 3. Triall of Villanage altered from natural triall by conſent, 7 H. 6. 7. Pleader of feoffment in fee upon Condition without Deed and re-entry, is good, if the other part confeſſe the Condition. 34 E. 3. Title Office de Court, 12. If 12 be ſworne and one departs, another of the Panel (by conſent) may be ſworne, and with the 11 give the Verdict, 11 H. 6. 13. The Court in a Quare Impedit may (by conſent) give longer day, then is limited by the Statute of Marlebridge H. 4. The Statutes of 2 E. 3. & 20 E. 3. provide, that neither for the great Seal, nor little Seal, Juſtice ſhall be delayed, yet when the matter concernes the King onely, if he commands it, it may be ſtayd. F. N. Br. 21. b. 27 H. 8. A Tenure may be created at this day by conſent of all, notwithſtanding the Statute of quia emptores terrarum, 6 E. 6. Dier 78. By ſpecial conſent of the Parties re-entry may be for default of payment of Rent, without demand thereof. Co. l. 5. 40. b. 2. in *Dormers* Caſe.

Error by conſent none.

6 In a writ of Error to reverſe a fine, the Error aſſigned was for that the writ of Covenant bare Teſte the 24 of April, returnable 15 Paſchal, which in truth was 15 of April, and ſo returns before Co. l. 5. 45. b. *Gages* Caſe.

the Teſte: And it was reſolved that per totam Curiam, that it ſhould be amended: becauſe Fines and common recoveries are but common aſſurances had by the mutual conſent of the parties, and therefore ſuch miſpriſions may be amended; howbeit in other actions no amendment ſhall be in ſuch caſe: Mich. 18 El. inter Norreys and Bamfield. A writ of Error was brought to reverſe a recovery in 19 H. 8. and the Teſte was a day after the return; nevertheleſſe, becauſe it appeared to be but a miſtake of the Clerks, and was in the Caſe of a Common recovery (which paſſeth by conſent) it was amended.

Co. l. 6. 65. b. 4 in Sir *Moyle Finches* Caſe.

Diverſity twixt *brevia adverſaria*, *brevia amicabilia*.

7 Where is a diverſity between brevia adverſaria, viz. brought to enherit land, &c. And brevia amicabilia, viz. brought by conſent and agreement amongſt friends; for true it is in brevibus adverſariis the practiſe of the Common-pleas ſhall not paſſe the ſo ſome of reſpitation of the Country, as in 6 E. 3. 11. the Demandant in a writ of Entry demands the Manor of C. the Tenant ſaith, that the tenements put in view are a Meſſuage and a Carve of land called, &c. and not a Manor, &c. whereby it appeares, that if it were not a Manor in truth, albeit it was ſo in Common Appellation, the writ ſhould abate; but it was adjudged in Sir Jo. Bruyn's caſe in the beginning of Queen El. Reigne, that in Common Recovery (which is had by the conſent and agreement of the parties) of acres of land, they ſhall be accounted according to the accuſtomable and uſual meaſure of the Country, and not according to the Statute de terris menſurandis made in 33 E. 1. So likewiſe it is agreed in 47 E. 3. 18. If a man bargaine and ſell ſo many acres of wood, that ſhall be meaſured according to the uſe of the County, viz. according to 18 foot to the Pole, and not according to the ſame Act; for in ſuch Caſe conſuetudo loci eſt obſervanda: alſo if a fine be acknowledged of a Manor, which (in deed) is a Manor in reputation onely and not in truth, yet is the fine good, becauſe done by conſent of parties.

F. N. B. 38. c. Præcipies.

8 In a Quare Impedit if the Defendant plead to iſſue and after makes default, a writ ſhall be awarded for the Plaintiffe to the Biſhop ad admittendum Clericum; but if to the Diſtreſſe returned againſt the Defendant, he comes, and takes day per præce partium, and then makes default the Plaintiffe ſhall not have a writ to the Biſhop, but a new diſtringas.

Dier 33. 13. &c. 28, & 29 H. 8. Termes eſſens.

9 A leaſe for yeares is made reſerving Rent, and the leſſor makes feoffment of the land, the termor being alſo upon the land, and without his conſent; in this Caſe the Rent is extinct: but if the feoffment be made by the agreement of the termor, that makes no extinguiſhment of the Rent, or ſurrender of the terme, &c.

122 *Volenti non fit injuria.*

Co. Inſt. p. 1. 368. a. 2. Litt. §. 701. Pl. Com. 91. the Parſon of *Hony Lanes* ca. Dying in a houſe no entry.

1 If the Tenant in an Aſſiſe of an houſe deſires the Plaintiffe to dine with him in the houſe, which the Plaintiffe doth accordingly, but doth not claime the houſe at that time; this is no entry or poſſeſſion to cauſe the Aſſiſe to abate; becauſe if he had been a ſtranger, he had been no treſpaſſer for volenti non fit injuria.

Dier 275. 46. 10 El. Priſoner in execution.

2 The Marſhall ſuffers one in execution to go at large by licence of the Chiefe Juſtice, the Plaintiffe alſo agreeing thereunto; in this caſe, after he returnes, he is in execution again, ſo as if the after wards eſcape, the Gaoler is ſubject to an action of Debt.

Dier 359. 1. 20 El. Tenure.

3 The Tenant peravaile, who holds of a Meſne, as of his Manor of D. in ſoccage, which Manor of D. was held over of the King by Knight-ſervice in capite, purchaſeth a releaſe of the Meſnalty: in this Caſe, the Tenant peravaile ſhall now hold of the King in capite; for volenti non fit injuria.

123 *Qui-*

123 *Quilibet poteſt renunciare juri per ſe introducto.*

1 Land may be amortiſed by Licences granted by the King and all the Lords immediate, and mediate of whom the land is holden; For it is a Rule in Law; Alienatio licet prohibeatur, conſenſu tamen omnium, in quorum favorem prohibitum eſt, poteſt fieri, and quilibet poteſt renunciare, &c. And the Licence of Lords immediate and mediate in this Caſe ſhall enure to two intents, viz. to a diſpenſation both of the Statute of Quia emptores terrarum, and alſo of the Statute of Mortmaine. Co. Inſt. p. 1. 98. b. 4. & 99. a. 3. & 99. b. 2.

2 If a man make a gift in taile upon Condition, that he ſhall not make a Leaſe for his owne life, or if a man make a leaſe for life or yeares upon Condition, that they ſhall not grant over their Eſtate or let the land to others: In theſe Caſes and the like, albeit Tenant in taile hath power by the Law to make a leaſe for his owne life, and the Leſſee for life or yeares to grant and let, yet by the Condition, and their owne agreement they have reſtrained themſelves of the liberty which the Law gives them: Likewiſe if a man make a gift in taile upon Condition that he ſhall not make a leaſe for three lives or 21 yeares according to the Statute of 32 H. 8. In this Caſe alſo the Condition is good to reſtraine the Tenant in taile from making ſuch leaſes; For, albeit the Statute doth give him power to make ſuch leaſes, yet that power may be reſtrained by Condition and his own agreement, becauſe this power is not incident to the Eſtate, but given to him collaterally by the Act, according to that Rule of Law, Quilibet poteſt renunciare, &c. Co. ib. 223. b. 3

3 If there be Lord and Tenant, which Tenant holds of his Lord by fealty and 20 s. Rent, here, if the Lord by his Deed confirme the Eſtate of his Tenant, to hold by 12 d. or by a penny, or a halfe penny; In this Caſe, the Tenant is diſcharged of all the other ſervices, and ſhall render nothing to the Lord, but what is compriſed in the ſame confirmation: For, the Lord by his confirmation to hold by leſſe ſervices hath abridged himſelfe of the power and intereſt, which was before legally due to him. Lit. §. 538. Co. ib. 305. a. 4

4 By the Common Law if Patron, Ordinary, and Incumbent had joyned in a grant of the Rectory or Vicarage, they might have chargeu it, or conveyed it to whom they pleaſed; becauſe they all together had the whole right in them, viz. the Patron, to preſent, the Ordinary to admit, inſtitute and induct and the Incumbent, to enjoy the glebe, tithes, and other profits; And all theſe had liberty to depart with their ſeveral rights and intereſts at their pleaſure. Lit. §. 648. Co. ib. 343. Note that this law is altered by ſtat. 13 El. cap. 10.

5 If A. be lawful owner of land and in poſſeſſion, and be afterwards diſſeiſed; in this Caſe, A. hath a good lawful right, and yet if A. being out of poſſeſſion granted away the land, or contracteth for it with another, he hath now made his good right of entry pretenced within the Statute of 32 H. 8. 9. and both the grantor and grantee within the danger thereof: A fortiori of a right of Action. Quod nota. Co. ib. 369. a. 3

6 A. enfeoffes B. upon Condition, A. and B. joyne in the grant of a Rent charge out of the land to C. the Condition is broken, A. enters; In this Caſe, it was objected that this grant enured, as the grant of B. and the confirmation of A. which confirmation could not alter the quality of the Eſtate: Howbeit, it was reſolved and adjudged that the land was chargable with the Rent, and one of the reaſons alleadged for it was, that every fee may be charged one way or other, and when both joyne in the grant, that have the whole intereſt in the land, it muſt needs be charged with the Rent, for if it cannot be done by their joint grant, there is no other way to do it. Co. l. 1. 146. a. 2 *Anne Mayors* Caſe.

7 A.

Co. l. 3. 60. b. 1. in *Lincolne* Colledge Ca.

7 A. and B. ſoynt-tenants for life, and to the heirs of the body of A. intermarry, and have iſſue C. who after the death of A. diſſeiſes B. and ſuffers a Common recovery, and B. releaſeth with warranty and dies; In this Caſe, the Eſtate taile had been barred, albeit B. had not releaſed with warranty: for it is reaſonable, that the entaile ſhould be cut off this way, as well as by joyning in a fine, or ſurrender of B. any recovery after againſt the heire: becauſe they both had power to barre the Eſtate taile one way or other, having the whole Eſtate in them ſubject to be docked.

An eſtate docked by leaſe.

Co. l. 10. 48 b. 4 in *Lampets* ca; F. N. B. 152. g. k.

8 Littleton ſaith, cap. Diſcont. fol. 144. that it is a Paryme in the Law, that land in fee-ſimple may be charged one way or other: So alſo it is a Paryme in the Law, that every right, title, or intereſt in præſenti or futuro by the joyning of all, that may claime any ſuch Right, Title, or Intereſt, may be barred or extinct; And therefore at the Common Law if the Donor and Donée had joyned in the grant of a rent-charge, and after the Donée had dies without iſſue, and the fee had reverted to the Donor, that he ſhould have held it charged, and yet he had but a poſſibility at the time of the charge made; Becauſe all thoſe who had any Eſtate or intereſt therein in præſenti or in futuro did joyne in the charge: So likewiſe (à fortiori) if they had joyned in a leaſe for yeares, and the Donée had dies without iſſue, the leaſe had been good againſt the Donor. In like manner, Leſſée for 400 yeares deviſes for life to his executor, the remainder to M. and dies, M. maries, her husband and ſhe releaſes to the Executor; In this Caſe, albeit M. had but a poſſibility, yet a releaſe by her Husband and her to the Tenant in poſſeſſion veſts the whole intereſt of the term of 400 years in the Executor; becauſe none other had intereſt in præſenti or in futuro but thoſe that joyned in the releaſe, and both conſented to it, the one in releaſing and the other in accepting thereof: For if they had joyned in an aſſignment of the term, it had alſo been good, cauſa qua ſupra; And in Caſe both joyne in a grant; it is the grant of him, that hath the term, and the releaſe or confirmation of the other.

Joinder of viſee in grant, &c. a leaſe.

The' principal Caſe there.

Co. lib. 49. a. 3. Paſc. 4 E. 6. in Co. Ba.

9 If a man make a leaſe to another for 21 years, if the Leſſée ſhall ſo long live; here, if the Leſſor and Leſſée joyne in the grant of a term, by Déed to another and after the Leſſée dies within the term ſo granted, the grantée ſhall enjoy the land during the reſidue of the term abſolutely. Fuit temus per Montague, Hales, Molineux, & Browne.

Leaſe and Leaſe joy.

Co. l. 10. 101. a. 3. in *Bewſages* Caſe.

10 In the Statute of 23 H. 6. 10. which enjoynes Sheriffes to take baile of priſoners within their guard for appearance upon reaſonable ſuerty of ſufficient perſons, &c. Here theſe words, Reaſonable ſuerty of ſufficient perſons, do not ſo reſtraine the Sheriffe, but that he may (if he pleaſe) take ſuerty of one ſingle perſon; for the Statute leaves it to his diſcretion to take ſuch ſecurity as he thinks fit; becauſe he is to be amerced, if the party appeare not at the day in the writ, and therefore it is at his peril, if he take not good ſecurity of the party arreſted, and he hath liberty to waive that power by taking leſſe ſecurity, then the Statute mentioneth: for thoſe words import rather an advice then a command, and Quilibet poteſt renunciare, &c.

Security the Sheriffe.

Dier 23. b. 148 28 H. 8. Stat. 27 H. 8. 10.

11 A man ſeiſed of land in right of his wife makes a feoffment in fee to his owne uſe, and declares his will to be, that the feoffées ſhall ſtand ſeiſed to the uſe of his wife for life; And then comes the Statute of Uſes 27 H. 8. 10. which ſaith, that Ceſtuy que uſe ſhall be deemed in poſſeſſion of ſuch an Eſtate as he had in the uſe; Here, the Queſtion was whether or no the Feme ſhould be remitted: And (by Shelley) it ſeemes ſhe is remitted, becauſe ſhe comes in not by her owne Act, but by an Act in Law, viz. by the Statute, and there is none againſt whom

Upon grant the Baron the Feme (though to her) no matter.

the may bring her Cui in vita; But Baldwin and Knightly è contra, because the comes in by Act of Parliament, to which every one is party, and the Statute saith, Cestuy que use shall be adjudged in such Estate as he had in the use; for if Tenant in tayle make a feoffment in fee to his owne use in fee or fee tayle, the issue is not remitted, because he had a fee-simple in the use, and the Statute conveyes unto him such an Estate as he had in the use. Ideo quære.

for. fee. 12 A Lease is made for yeares, upon Condition, that the Lessée shall not alien to any person without the Lessors Licence the land nor any part thereof, the Lessor gives him Licence to alien part, the Lessee aliens the residue without Licence; And it was adjudged that the Lessor might enter, notwithstanding the dispensation with the condition in part, and that the condition was intire. Dier 334. 32. 16 Eliz.

re of an tayle. 13 Baron and Feme are Tenants in special tayle, the Baron alone levies a fine to his owne use, and deviseth the Land to the Feme for life (the remainder over) rendring Rent, the Baron dies, the Feme, enters, and payes the Rent, and dies; In this Case, the Issue is barred for two causes, 1 By the fine, which hath barred his conveyance to the entaile, 2 By the Remitter waived by the mother. Dier 351. 24. 18 Eliz.

124 *Omnis Ratihabitio retrò-trahitur, & mandato seu licentiæ æquiparatur.*

lortgageor & lortgagee. 1 If there be Mortgageor and Mortgagée of Land, and at the day of payment of the Money for the redemption of the Land a Stranger (of his owne head) in the name of the Mortgageor or his heire (but without his consent for privity) tender the money, and the mortgagée accepteth thereof; In this Case, the Mortgageor or his heire agréeing thereunto, it is a good tender and satisfaction, and the Mortgageor or his heire may re-enter into the Land mortgaged immediately after such tender and consent thereunto: for Omnis Ratihabitio, &c. howbeit the mortgager or his heir may dis-agrée thereunto, if he will. Co. Inst. p. 1. 206. b. 4.

lastard and ulier. laime with- ive yeares r fine. 2 In Case of Bastard eigne and Mulier puisne; regularly none shall enter upon the Bastard to vest the Estate in the Mulier, but the Mulier himselfe, or some other by his special command; no more then in Case of a fine to avoid it by claime within five yeares; For there also, a Stranger cannot (of his own head) in the name of him, that right hath, enter within the five yeares to avoid the fine: Howbeit in both these Cases, 1 If the Mulier agrée thereunto before the dissent of the Bastard: Or 2 If he that right hath before the five yeares be past, do assent thereunto, the claime is good, and shall avoid the Estate both of the Bastard and of the Comisée, as it was holden in the Lord Andleys Case, Mich. 38, & 39 Eliz. in B. R. per Curiam: Quia omnis Ratihabitio, &c. and the last Case standeth well with the words of the Statute, So that they pursue their title, &c. by way of Action or entry, &c. and so also is the Booke in 31 H. 8. Br. Entry Congreg. 123. Co ib. 245. a. 3 Litt. § 401. Co. l. 9. 106. a. 1 in *Marg. Podgers* Case.

ry by a anger. 3 If an Infant make a feoffment in Fée a Stranger (of his owne head) cannot enter to the use of the Infant, for the Estate is voidable; as it was held P. 39 Eliz. in Co. B. per Cur. But where an Infant or a man of full age is disseised, an entry by a stranger (of his own head) Co. ib. 9. 4.

is good and veſteth preſently the Eſtate in the Infant or other diſſeiſee: So it is alſo if Tenant for life make a feoffment in fee, and a ſtranger enter for a forfeiture in the name of the Reverſioner (but without his priority) for in that Caſe alſo the Eſtate ſhall be thereby veſted in the Reverſioner.

Co. ib. 258. a. 2. 4 If an Infant or a man of full age have any right of Entry into any lands, any ſtranger in the name and to the uſe of the Infant or man of full age may enter into the lands, and (regularly) this ſhall veſt the lands in them without any commandment precedent or agreement ſubſequent: But if a diſſeiſor levie a fine with proclamation according to the Statute, a ſtranger without a commandment precedent or agreement ſubſequent within the five yeares cannot enter in the name of the diſſeiſee to avoid the fine, Co. l. 9. fol. 106. 2. in the Lord Awdleys Caſe: And that reſolution was grounded upon the conſtruction of the Statute of 4 H. 7. 24. Howbeit a aſſent ſubſequent within the 5 years is ſufficient, as is afore ſaid. Idem.

Co. l. 4. 30. a. 3. 5 The Lord of a Mannor may by parol retaine one to be Steward of his Mannor, and ſo may he do a Bailiff by parol onely; and ſuch retainer ſhall ſerve, until they be diſcharged; for his permitting of him to be Steward or Bailiff without countermand is a ratification of his Office. Tr. 41. Eliz. inter Harris and Jay in B. R. Steward. Bailiffe.

Pl. Co 8. 6. 4. in *Fogaſſaes* Caſe. 6 If another man make a diſſeiſin to my uſe, and afterwards I agree to it, In this Caſe, I am a Diſſeiſor ab initio, albeit the agreement thereunto was after the fact done: So if one raviſh a woman, and ſhe afterwards aſſents to the Raviſhor, in this Caſe, this agreement ſhall have a retroſpect to the firſt Act, and ſhall be then ſaid to be executed. Aſſent to diſſeiſin or a Raviſhor.

125 *Nemo tenetur accuſare ſeipſum.*

Co. Inſt. p. 1 158. b. 1. 1 In trial of Challenges, if the cauſe of the Challenge touch the bodily or diſcredit of the Juror, he ſhall not be examined upon his oath concerning the ſame; but in all other Caſes he ſhall be examined upon oath, the better thereby to informe the triors. Challenge of a Jure.

Co. l. 7. 10. a. in *Wybreds* Caſe 2 Regularly, none ſhall be compelled to alleadge that, which makes againſt him, for every one ought to alleadge that, which makes for him, and is for his advantage: And therefore in all Caſes, where an intereſt or Eſtate commenceth upon Condition precedent, be the Condition or Act to be performed by the Plaintiffe, or Defendant, or any other, and be the Condition in the affirmative or negative, there the Plaintiffe ought to ſhew that in his Count, and averre the performance thereof; For in ſuch Caſe the intereſt or Eſtate commenceth in him, by the performance of the Condition, and is not in him, until the Condition be performed: but it is otherwiſe, when the intereſt or Eſtate paſſeth preſently and veſts in the grantee, and is to be defeated by matter ex poſt facto, or Condition ſubſequent, be the Condition or Act to be performed by the Plaintiffe, Defendant, or any other, and be the Condition in the affirmative or negative; For in ſuch Caſe, the Plaintiffe may count generally without ſhewing the performance thereof, and this ſhall be pleaded by him, that will take advantage of the Condition or matter ex poſt facto, and not by the Plaintiffe; for no man is bound to betray his own cauſe. Vide plus ibid. Condition precedent & ſubſequent.

P. Co. 76. b. 3. in *Fogaſſaes* Caſe. 3 In Fogaſſaes Caſe in the Commentaries, there was an agreement with the Cuſtomer before the landing of the wood, and if there had been any default in the Defendant afterwards to have made the agreement void Agreement precedent good.

void ab initio, it ought to have been alleaged by the Antecomer and not by the Defendant, because it make against him: So Hill. 3 H. 7. 11. if a Sheriffe take one by force of a capias, he doth well, but if he thereupon returne a non est inventus, he shall be adjudged a trespasser ab initio: And in such Case, in false imprisonment brought against him, it is sufficient for him to alleadge, that he was Sheriffe, and that the capias came to him, and that by force thereof he took and imprisoned the party, and then to demand, judgment si action, and ought not to say, that he returned, non est inventus, because that makes against him, that is, makes him a trespasser ab initio: but the false returne ought to be alleadged by the Plaintiffe, who is to take advantage thereof.

heriffes return.

d and in.

4 If the Ecclesiastical Court will enjoyne a man to be examined upon oath for the discovery of any covin or fraud concerning himselfe, a Prohibition lyeth, for albeit the originall cause belongs to their Conizance, yet the covin and fraud are collateral, and the avoiding of the Act to be done bona fide is punishable both in the Starre-chamber, and by the penal Law of fraudulent gifts, and therefore not to be extorted out of himselfe by his oath. Hob. 84. Spendlow.

126 *Nec se infortuniis & periculis exponere.*

1 In making continual claime, if the adverse party lie in waite in the way with Weapons, or by words menace to beat, mayhem, or kill the party, that would enter; in such Case, the Law allowes a claime, made as neere the land as he dare approach for feare of death, or other bodily hurt: Howbeit (saith Bracton) Talis debet esse metus, qui cadere potest in virum constantem; & qui in se contineat mortis periculum, & corporis cruciatum; Et nemo tenetur se infortuniis & periculis exponere. And therefore every doubt or feare is not sufficient; for it must concerne the safety of the person of the man, and not his houses or goods, for the feare of burning his houses, or taking away or spoiling his goods, is not sufficient, because he may recover the same, or damages to the value thereof without any corporal hurt; But if the Jury upon a special Verdict doe find, that the disseisee did not enter for feare of corporal hurt, this is sufficient and it shall be intended, that they had evidence to prove the same: Also it seemeth that feare of imprisonment is sufficient; because such a feare sufficeth to avoid a bond, or a Deed; for the Law hath a special regard to the safety and liberty of a man, and imprisonment is a corporal damage, a restraint of liberty, and a kind of captivity.

For the time of doing things it countenanceth more.

127 Things done in time of Peace, than in time of Warre.

eisin in ef warre.

1 If a man be seised of tenements in fee by occupation in time of Warre and thereof die seised in time of Warre, and the tenements descend to his heire, such descent shall not out any man of his entry, Vide 7. E. 2. Now a time of Peace is, when the Courts of Justice be open, and the Judges and Ministers of the same may by Law protect man from wrong and violence, and distribute Justice to all: on the other side, when by invasion, insurrections, rebellions, or the like, the peaceable course of Justice is disturbed and stopped, so as the Courts of Justice be (as it were) shut up (nam inter arma silent Leges) then it is said to be a time of Warre: And the trial thereof is by the records and Judges of the Courts of Justice: for by them it will appeare, whether Litt. §. 412. Co. Inst. p. 1. 249 a. &c.

whether Juſtice had her equal courſe of proceeding at that time, or no: And this ſhall not be tried by Jury, but by them, as aforeſaid: And therefore albeit during theſe late troubles the Courts of Juſtice ſate duly at Weſtminſter, as in other times of Peace, yet quære, whether an occupation and diſcent at that time within the Kings Quarters would barre the diſſeiſée, for although they ſate, yet had they no power there to execute their judgment.

Co.ib.249.b.2 & 4. 6 E. 3. 41. Co.l.2.93.a.3 in *Bingbams* Caſe: F.N.B.31.i.

2 If a man be diſſeiſed in time of Peace; and the deſcent is caſt in time of Warre, this ſhall not take away the entry of the diſſeiſée: So likewiſe in real Actions, the Explees, or taking of the profits, are layed tempore pacis; for if they were taken tempore belli, they are not accounted off in Law: And as it is in Caſe of diſcent, ſo it is alſo in Caſe of preſentation; for no uſurpation in time of Warre putteth the right Patron out of poſſeſſion, albeit the Incumbent come in by inſtitution and induction: And time of warre doth not onely give privileдge to them, that be actually in Warre, but to all others within the Kingdome; And albeit the admiſſion and induction be in time of Peace yet if the preſentment were in time of warre, it putteth not the right Patron out of poſſeſſion. The like.

3 The Law countenanceth more the proceeding againſt a Felon in time of peace, then in time of Warre: And therefore if a man commit Felony in time of Peace, he ſhall by judgment forfeit his lands, three manner of wayes, 1 quia ſuſpenſus per collum, 2 quia abjuravit regnum, 3 quia utlagatus eſt; but they, who are hanged by Martial Law, (in favorem belli) forfeit no lands.

128 Things done in the day more then thoſe done in the night.

Co. Inſt. p.1. 135.a.4. Mirr.l.5.c.1.

1 It is not lawfull to hold pleas in the night time or before Sunriſe; And therefore the Mirroir ſaith, Abuſion eſt que lon tient pleas par Dimenches (v. Mondayes) ou par outres jours deſendres, or devant le Soleil levy, ou nectanter, &c. No pleas the night.

Co.ib.142.a.3

2 For damage feſant a man may diſtraine in the night, becauſe otherwiſe, it may be the beaſts will be gone, before he can take them, but for a Rent or ſervice the Lord cannot diſtraine in the night, but it ought to be done in the day time, and ſo it is alſo of a Rent-charge. Vide ſuprà 110. R. 4. No diſtreſs the night.

Co.l.7.6. b.2. in *Milbornes* Caſe.

3 For Robbery committed in the morning ante lucem, the Hundred ſhall not be charged: And albeit no time be ſpecified in the Statute of Wincheſter 13 E. 1. yet it ſhall not extend to Robbery done in the night; becauſe no laches or negligence can be adjudged in the Hundred for default of a good guard in the night: Neither can they in the night make purſuit or inquire after them; for as the Scripture ſaith, The day is made for man to labour in, and the night to reſt. Note that the Statute of 27 El. 13. hath altered this Law. No purſuit the night.

Co.ib.4.

4 At the Common Law, if one be ſlaine in a Towne by day, viz. ſo long as there is full day light, and he that hath ſlain him eſcape, the Towne, where the Felony was committed, ſhall be amerced for the eſcape; And ſo it is held in 21 E. 3. Tit. Corone 238. Dum quis Felonicè occiſus fuit per diem; niſi felo captus fuit, tota Villata illa oneretur; and with this agrées 3 E. 3. But if ſuch a Murder or Homicide be committed in the night, the Towne ſhall not be a amerced by the Common Law, becauſe no laches or neglect can be attributed to them. Vide plus ibid. For an eſc no amerci-ment.

When

When things are fit to be ſtraightned to a certaine time, it eſteemeth, according to the nature of the things.

129 Sometimes a whole day ſufficient.

ods laſt in rre.

1 Where goods are loſt in warre, and recovered from the enemy by another of the Kings ſubjects, the owner ſhall have them again, if he make freſh ſuit before the Sun-ſet, otherwiſe not. Fitch. 38.

130 Sometimes a whole yeare.

protection ore a yeare.

1 No protection either protecturæ or moraturæ ſhall endure longer, then a yeare and a day next after the Teſte or date of it; and ſo it is alſo of an Eſſoine de ſervice le Roy: If a protection beare date 7 die Januarii, and have allowance pro uno anno, the re-ſummons, re-attachment, or re-garniſhment may be ſued 8 Januarii the next year: howbeit Britton (fol. 280, 282, & 283.) treating of an Eſſoine beyond the Grecian-ſea in a Pilgrimage, &c. ſaith thus, Aſcun gent ne quident ſe purchaſent nous letters de protection patents durable a 1 an. ou 2, ou 3 ans, & Jalumeyus ſont attorneys generals auſi par nous letters patents: Et ceux ſont bien & ſagement; car nul grand Seignior ne Chevaler de noſtre Realme ne droit prender chimin ſans noſtre conge, car iſſuit poet le Realme remainer diſgarnæ de fort gente. Co. Inſt. p. 1. 130. b. 3. & 254. b. 4.

yeare and a y in many ſes.

2 The Law in many Caſes hath limited a yeare and a day to be a legal and convenient time for many purpoſes; As at the Common Law upon a fine or final judgment, and execution in a writ of right, the party grieved had a yeare and a day to make his claime; So the Wife or heire hath a yeare and a day to bring an appeals of death: If a Villain remained a yeare and a day in ancient demeſne, he was privileged: If a man be wounded, poyſoned, or, &c. and dieth thereof within the yeare and the day, it is felony: By the ancient Law if the Feoffee of a diſſeiſor had continued a yeare and a day, the entry of the diſſeiſee for his negligence had been taken away: After judgment given in a real Action, the Plaintiffe within the yeare and the day may have a Habere facias ſeiſinam, and in an Action of Debt, &c. a Capias, fieri facias, or a levari facias. And in many other Caſes: But this time of a yeare and a day in Caſe of continual claims is ſince altered by the Statute of 32 H. 8. 33. Co. ib. 254. b. 3 Co. l. 5. 107. b. 4 Sir *Henry Conſtables* Caſe. & Co. l. 8. 100. a. F.N.B. 79. a.

ecke.

3 By the Statute of Weſt. 1. cap. 4. it is provided, that if a man, Dog, or Cat eſcape alive out of the ſhip, nothing, which was therein, ſhall be adjudged wrecke; but that the things ſhall be kept ſafe by the view of the Sheriffe, Coroner, or other Bailiffe of the King, &c. So as if any come in and prove, that they are his Lords, or periſhed in his cuſtody, they ſhall be rendred unto him without delay; and this is but a declaration of the Common Law; for Bracton (who wrote before this Statute, viz. Tempore H. 3.) delivers the ſame in ſubſtance; and if the right owner die, his Executors or Adminiſtrators may make the like proofe within the ſame time: So it is alſo of Flotſan, Jetſan, and Lagan: And if any living creature come a ſhore, or the goods may be known by the marke or cocket, it ſaveth. Co. l. 5. 107. b. 3 in Sir *Henry Conſt.* Caſe.

Co.ib.b.4. 4 In many Caſes concerning time, the Law eſteemes a yeare and a day a convenient time, as in Caſe of an Eſtray, if the owner (proclamations being made) do not claime it within a yeare and a day, it is forfeit; the like time is alſo given in Caſe of deſcent after entry or claime: but in Caſe of Wrecke, the yeare and day ſhall be accounted from the taking or ſeiſure of the goods as wrecke; for albeit the property is in Law veſted in the Owner before ſeiſure, yet until he ſeiſe and take them into his actual poſſeſſion, it is not known, who claimes the wrecke; nor to whom the Owner ſhall reſort to make his claime, and to manifeſt his proofes: And if the Owner bring his Action for them within the yeare and day, it ſufficeth, albeit the Verdict be not given for the recovery of them, until afterwards. Eſtray d

F.N.B.121. p. 5 If a man be impriſoned upon a Capias pro fine at the Kings ſuit within a yeare after the judgment paſt againſt him at the ſuit of the party, and the Goaler ſuffer him to eſcape the party ſhall have an Action of Debt againſt the Goaler for his damages recovered by the judgment, although he was not impriſoned at his ſuit, but if he be taken after the yeare, the party is put to his ſcire facias, &c. Vide infrà 189. 41. Capiam p

131 Sometimes the laſt part of the laſt day.

Co Inſt. p. 1. 202.a.2. Co l.5.114 b.2 in *Wades* caſe. Co. Inſt. p. 1. 206.b.3. 1 The time of demand of a Rent is ſuch a convenient time before the Sun ſetting of the laſt day of payment, as that the money may be numbred and received: Howbeit if the tender be made to him that is to receive it, upon any part of the Land, at any time of the laſt day of payment, and he refuſeth, the Condition is ſaved for that time; for by the expreſſe reſervation the money is to be payd on the day indefinitely, and convenient time before the laſt inſtant, is the uttermoſt time appointed by Law, to the intent that then both parties ſhould meet together; the one to demand and receive, and the other to pay it, ſo as the one ſhould not prevent the other. Vide Dier 130. b. 70. & 222. 22. The time of demand and payment of Rent.

Co. Inſt. 202. & Pl. a. 3. Comm. 70. b. 1. in *Kedwellies* Caſe, againſt *Brand*. 2 If the reſervation of the Rent be (as Litt. putteth the Caſe §. 325.) at certain Feaſts, with Condition that if it happen the Rent to be behind by the ſpace of a weeke after any day of payment, &c. In this Caſe, the Feoffor needeth not demand it on the Feaſt day, but the uttermoſt time for demand is a convenient time (as afore-ſaid) before the laſt day of the weeke, unleſſe before that the Feoffee meet the Feoffor upon the land and tender the Rent, as is afore-ſaid. The like.

Co.ibid. 3 If Rent be granted payable at a certaine day, and if it be behind and demanded, that the grantee ſhall diſtraine for it: In this Caſe, the grantee need not demand it at the day, but if he demand it at any time after, he ſhall diſtraine for it; For the grantee hath election in this Caſe to demand it when he will, to enable him to diſtraine. The like.

4 If Rent be granted payable upon Michaelmas day or within 20 dayes after; it ſeems the grantee muſt demand it a convenient time before Sun-ſetting both upon Michaelmas day, and the laſt of the 20 dayes; for in this Caſe, it ſeemes to be in the election of the grantor to tender and pay it upon Michaelmas day, or the twentieth day at his pleaſure. Tamen quære. The like.

Pl.Co.70.b. in *Kedwellies* Caſe againſt *Brand*. 5 If Rent be reſerved to be payd upon Michaelmas day, and if it happen to be behind forty days after, that then the Leſſor may re-enter; In this Caſe, the Leſſor muſt demand it a convenient time before Sun-ſet upon the fortieth day, to give advantage of re-entry: Howbeit The like.

beit if the Rent be limited to be payd at another place aſſigned and not upon the land (as Rent reſerved out of Dale to be payable at Sale) in ſuch Caſe the Lellor may take advantage of re-entry without demand, and the Leſſée is then bound to tender it at his peril: but when no place is limited, the land is the place, becauſe it is principal Debtor. Vide 52. 10.

ſſee. 6 If Rent be reſerved to be payd at the Feaſts of Michaelmas and the Annunciation, or within a moneth after the ſaid Feaſts by equal portions, and if it happen the Rent to be behind after any of the ſaid Feaſts and dayes by the ſpace of 8 weeks, that then, &c. In this Caſe, it ſeemed to Sanders Cheife Juſtice, Whiddon, and others, that the 8 wéekes ſhould be accounted from the 28 day after the Feaſt, becauſe that makes for the benefit of the Leſſée and againſt the Lellor, who grants, and the 28 day is a day of payment at the Election of the Leſſée, as well as the firſt Feaſt and day: Tamen quære, becauſe no Feaſt and day certain is mentioned before, but the Feaſt day; and the moneth is not any day, nor comprehends any day in certain, &c. Dier 142. 58. 3, 4 P. M.

y-hold. 7 In Caſe of forfeiture of a Copi-hold upon non-payment either of Rent or Fine, there muſt be a demand thereof, at the time it grew due, or ſome time after, of the perſon of the Tenant. Ho. 125. *Denny* and *Leyman*.

132 When no time is limited, the Law appointeth the moſt convenient, and in ſome Caſes, the immediate time.

me con- nient, and ring life. 1 If a Feoffment be made upon Condition, that if the Feoffor pay a certain ſumme of money to the Feoffée, that then it ſhall be lawfull for the Feoffor and his heires to enter; in this Caſe, if the Feoffor die before the payment made, tender by the heire is void; becauſe it was limited to be payd by the Feoffor himſelfe, viz. during his life; for ſéeing no time is limited, the Law doth appoint the time, and that is, during the life of the Feoffor; wherein divers diverſities are worthy the obſervation; As firſt, betwéen the ſaid Caſe of the Condition of a feoffment in Fée, for the payment of money, where no time is limited: And the Condition of a bond for the payment of a ſum of money where no time is limited; For in ſuch a Condition of a bond the money is to be paid preſently, viz. in convenient time: And yet in Caſe of a Condition of a bond there is a diverſity betwéen a Condition of an obligation, which concernes the doing of a tranſitory Act without limitation of any time, as payment of money, delivery Charters, or the like; for there the Condition is to be performed preſently, that is, in convenient time, and whereby the Condition of the Obligation the Act that is to be done to the Obligée is of his owne nature local; For there the Obligor (no time being limited) hath time during his life to performe it as to make a feoffment, &c. in Caſe where the Obligée doth not haſten the ſame by requeſt. Again, where the Condition of the Obligation is local, there is alſo a diverſity, when the concurrence of the Obligor and Obligée is requiſite, (as in the Caſe of a feoffment, &c.) and when the Obligor may perform it in the abſence of the Obligée, as to acknowledge ſatisfaction in the Court of the Upper-Bench; for here albeit the knowledge of ſatisfaction is local, yet becauſe he may do it in the abſence of the Obligée, he muſt do it in convenient time and hath no time during his life. Litt. §. 337. Co. Inſt. p. 1 208. a. 3. &c. Co. l. 6. 30. b. 4. in *Bothies* Ca. Co. l. 2. 79, 80, 81. in the Lo. *Cromwels* ca.

2 There

Co.ib.208.b.3 Co.l.630.b.4 in *Bothies* ca. The Lo. *Cromwels* Caſe. Co.ib.218.b.4

2 There is a diverſity between a Condition of an Obligation, and a Condition upon a feoffment, where the Act, that is Local, is to be done to a ſtranger, and where to the Obligée or Feoffor himſelfe; as if one make a feoffment in Fée upon Condition, that the Feoffée ſhall enfeoffe a ſtranger, and no time limited; In this Caſe, the Feoffée ſhall not have time during his life to make the feoffment; for then he ſhould take the profits in the meane time to his owne uſe, which the ſtranger ought to have; and therefore in ſuch Caſe he ought to make the feoffment as ſoone as conveniently he may: And ſo it is alſo of the Condition of an Obligation: But if the Condition be, that the Feoffée ſhall re-enfeoffe the Feoffor, there the Feoffée hath time during his life for the privity of the Condition betwixt them, unleſſe he be haſtned by requeſt; and ſo it is likewiſe of an Obligation. The like.

Co.ib.208.b.4 alſo in *Bothies* Ca. in the Lo. *Cromwels* Ca.

3 There is alſo a diverſity, when the Obligor or Feoffor is to enfeoffe a Stranger, and when a Stranger is to enfeoffe the Feoffée or Obligée: As if A. enfeoffe B. of Black-acre, with Condition, that if C. enfeoffe B. of White-acre, A. ſhall re-enter; in this Caſe C. hath time during his life to enfeoffe B. if B. doth not haſten it by requeſt; and ſo it is alſo of an Obligation. The like.

Co.ib.208.b.4 alſo in *Bothies* Caſe.

4 In ſome Caſes, albeit the Condition be collateral, and is to be performed to the Obligée, and no time limited for the doing thereof, yet in reſpect of the nature of the thing, the Obligée ſhall not have time during his life to perform it: As if the Condition of an Obligation be, to grant an Annuity or yearely Rent, to the Obligor during his life, payable yearely at the Feaſt of Eaſter, this Annuity or yearely Rent muſt be granted before Eaſter, or elſe the obligée ſhall not have it yearely at that Feaſt during his life, & ſic de ſimilibus, and ſo it was reſolved by the Iudges of the Common Pleas in Andrewes his Caſe, which ſée in Dier 14 Eliz. 311. The like.

Co.ibidem. Co.l. 6. in *Bothies* Caſe, fol. 30. b. 4.

5 When the Obligor, Feoffor, or Feoffée is to do a ſole Act or labour, as to go to Rome, Jeruſalem, &c. In ſuch and the like Caſes, the Obligor, Feoffor, or Feoffée hath time during his life to perform it, and cannot be haſtned by requeſt: And ſo it is alſo if a ſtranger to the obligation or feoffment were to do ſuch an Act, he alſo hath time to do it at any time during his life. The like.

Co.ib.218.b.4 Litt.§.352.

6 If a feoffment be made upon Condition, that the Feoffée ſhall convey the land to the Feoffor and his Wife, to have and hold to them and the heires of their two bodies, and for want of ſuch iſſue to the right heires of the Feoffor: here, no time being limited, the Feoffée by the Law hath time during his life, unleſſe he be haſtned by the Requeſt of the Feoffor or the heires of his body; And if the Feoffor die before ſuch re-conveyance, the Feoffée (as Littleton ſaith) ought to make a conveyance thereof as néere to the intent of the Condition, as may be, viz. to the Feme for life without impeachment of Waſte, the Remainder to the heires of his body on the Feme engendred, and for default of ſuch iſſue to the right heires of the Feoffor: And yet in this Caſe alſo (albeit the Feme be a ſtranger) the Feoffée hath time during his life to make the re-conveyance, and is not bound to make it in convenient time, as in ſome other Caſes he ſhall, when a ſtranger is to take the Eſtate: becauſe the Feoffor, who was privy to the Condition was to take jointly with the Feme: So it is likewiſe, where the Condition is to enfeoffe the Feoffor and a ſtranger, for then alſo the Feoffée hath time during his life, unleſſe he be haſtned by requeſt; Otherwiſe it is (as hath béen ſaid) where the Condition is to enfeoffe a ſtranger or ſtrangers onely. The like.

Co.ib.219.a.4 & l.2. 79. &c. in the Lord *Cromwels* Ca.

like. 7 If a Feoffment in Fée be upon Condition, that the Feoffée shall make a gift in taile to the Feoffor: the Remainder to a stranger in Fée; there the Feoffée hath time during his life, as is afore-said; because the Feoffor who is party and privy to the Condition, is to take the first Estate: But if the Condition were to make a gift in taile to a stranger, the Remainder to the Feoffor in Fée; In this Case, the Feoffée ought to do it in convenient time; For that the stranger is not privy to the Condition, and he ought to have the profits presently. Co. ib. 219. b. & l. 2. *ubi sup.*

light. 8 The Statute of Winchester 13 E. 1. ordaines, that upon a Robbery committed in the day time, the Hundred shall satisfie the damage to the party Robbed, and the time here intended is not betwixt Sun and Sun, but betwixt twilight and twilight. Co. l. 7. 6. a. 4. in *Ashpoles* Case.

he present ne. 9 In the Statute of Westm. 2. cap. 12. De servientibus, Balivis, &c. qui ad computum reddendum tenentur, &c. cum Dominus hujusmodi servientium dederit eis auditores compoti, & contingat ipsos esse in arreragiis super compotum suum, &c. arrestentur corpora eorum, & per testimonium auditorum ejusdem compoti mittantur & liberentur proximæ Gaolæ Domini Regis in partibus illis, &c. In this Case, albeit no time be limited, when the accomptant shall be imprisoned, yet it ought to be done presently, as it is held in 27 H. 6. 8. And the reason thereof is rendred in Fogassaes Case in Pl. Com. 17. viz. that the generalty of the time shall be restrained to the present for the benefit of him, upon whom the paine shall be inflicted, and with this also agrées Pl. Com. in Stradlings Case 206. b. Co. l. 8. 119. b. 4. in Doctor *Bonhams* Ca.

on demand 10 A man granted a Rent out of certain land pro consilio impenso & impendendo, to have and hold to him and to his Assignes for term of his life payable at four Feasts in the yeare, and for default of payment upon demand, it should be lawful for him to distraine; the grantée granted the Rent over: The Assignæ after one of the dayes demanded the Rent, and distrained, and the distresse was adjudged lawfull; For (in this Case) he needed not to make a demand at any of the days, as in the Case of re-entry, but he might demand it when he pleased; because it was onely to entitle him to his remedy for his meer duty: For it is not necessary, that the grantée of a Rent-charge, or secke should demand it at the very time, when it becometh due, but at any time after it is sufficient: because this is not like a demand of a Rent upon a Condition, in as much as that is penal and overthroweth the whole Estate, and therefore (in such Case) the time of demand must be certain, to the end the Lessée, Donée, or Feoffée, may be there to pay the Rent; But the demand of a Rent-secke or Rent-charge is onely a formal meane to recover that, which is due, and therefore (in that Case) it may be demanded after it is behind at any time, whether the Tenant be present or no, because remedies for right are ever favourably extended. Vide No. 207, 208. Co. Inst. p. 1. 144. a. 1. Co. ib. 153. a. 4

es of pay- 11 As to the payment of Rent issuing out of land, there are 4 times of payment, The 1 voluntary and not satisfactory, and yet good to some special purpose; The 2 voluntary, and in Case satisfactory and in Case not; The 3 legal and satisfactory absolutely, and not coercive, And the 4 legal, satisfactory, and coercive: As to the 1 Lessée, &c. pay his Rent before the day, this is voluntary, and not satisfactory, but if it be payd in name of seisin of Rent, although it shall not enure by way of satisfaction, yet it shall give sufficient seisin to an Assise or other remedy for the Rent. For the 2 if the Rent be payable at Easter, in that Case, if the Tenant pay the rent in the morning, and the lessor die two houres before none of the same day, this payment was voluntary, and yet is good Co. l. 10. 127. b. 3. in *Clun's* Case.

ſatisfaction againſt the heire, but not againſt the King, 44 E. 3. 3. As to the third the legal time is a convenient time before the laſt inſtant of the day, and is the moſt extreme time, and is ſatisfactory and not coercive, for untill the end of the day no remedy by Law is given, 21 H. 6. 40. As to the fourth, that is when the Rent being due and arrear is recovered by order of Law, and this is ſatisfactory, but coercive withall, concerning all which ſeveral times the Poet ſaith.

Judicis officium eſt, ut res, ita tempora rerum
Quærere, quæſito tempore, tutus eris.

12 Vide 183. 1.

Dier 354. 32. 19 El. 13 A. levies a Fine to B. to the uſes in a certain Indenture mentioned, wherein there is a proviſo, that if A. pay or tender 20 l. during his life to B. at the Font-ſtone of the Church of Sarum, that it ſhall be to the uſe of A. in Fee; In this Caſe, becauſe no day is limited, the tender will not be to purpoſe, unleſſe A. give notice to B. when he will pay it, to the end B. or his Aſſignée may be there to receive it. Notice of payment.

133 The third offence is eſteemed moſt heynous.

2 E. 4. 1. 1 The third writ not returned by the Sheriffe is a contempt, where an attachment lieth. Finch. fol. 10. b. Sheriffes returne.

134 The place alſo ought to be convenient.

Litt. §. 180. Co. Inſt. p. 1. 120. a. 1. 1 If a Villain purchaſe an Advowſon full of an Incumbent, the Lord may immediately come to the Church and claime the Advowſon; and by this claime, it veſts preſently in him; becauſe if he ſhould ſtay till an avoydance, the Villein might alien the Advowſon, and ſo out the Lord of his preſentment: And in this Caſe, albeit the Advowſon is a thing incorporeal and not viſible, yet becauſe the principal duty of the preſentée of the Patron is to be done in the Church, the claime of the Villains Lord muſt be made there, and by that claime the Inheritance of the Advowſon ſhall be veſted in the Lord; For every claime or demand to devest any Eſtate or Intereſt muſt be made in the place, which is moſt apt for that purpoſe. At the Church

Co. ib. 153. a. 4 & b. 3. & 201. b. 4. Litt. §. 341. 2 When Rent is iſſuing out of Land, and no place limited, at which it ſhall be payd, the land is the debtor, and the Rent muſt be demanded upon the land: howbeit, if there be houſe and land, a demand upon the land is ſufficient, unleſſe it be for a Condition broken, for then it ought to be at the houſe. Upon the land.

Co. ib. 201. b. 1. 3 If the King maketh a leaſe for yeares reſerving a Rent payable at his receipt at Weſtminſter: and after the King granteth the reverſion to another and his heires: In this Caſe, the grantée ſhall demand the Rent upon the land, and not at the Kings receipt at Weſtminſter. For as the Law without expreſſe words doth appoint the Leſſée in the Kings Caſe to pay it at the Kings receipt, ſo in Caſe of a ſubject, the Law appoints the demand to be on the land. The like.

Co ibidem. 15 El. Dier 329 4 If there be a houſe upon the land, the Rent muſt be demanded at the houſe, and that, not at the back-dore, but at the fore-dore thereof, becauſe the demand muſt be ever made at the moſt notorious place, and it is not material, whether any perſon be there or no: and albeit the Feoffée or Leſſée be in the hall or other part of the houſe, yet the Feoffor or Leſſor need come no farther, then to the fore-dore: for that is the place appointed by Law, although it be open. Fore-doore.

5 If

Wood. 5 If a Feoffment be made of a Wood onely, the demand muſt be made at the gate of the Wood, or at ſome high way leading through y Wood, or other moſt notorious place; And if one place be as notorious as another, the Feoffor hath election to demand it, at which he will; And albeit the Feoffée be in ſome other part of the Wood ready to pay the rent, yet that ſhall not avail him; Et ſic de ſimilibus. Co. ib. 202. a. 1. and Dyer ibid.

void demand. 6 If the Feoffor demand the rent on the ground at a place which is not moſt notorious, as at the back Doore of a Houſe, &c. And in pleading the Feoffor alledge a demand of the rent generally at the Houſe, the Feoffée may traverſe the demand, and upon the Evidence it ſhall be found for him, ; for that ſuch a demand is void, and (indeed) no demand at all. Co. Inſt. p. 1. 202. a. 1.

another ace. 7 If rent be reſerved to be paid at any place from the land, yet it being in Law a rent, the Feoffor or Leſſor muſt demand it at the place appointed and agreed upon by the parties, obſerving the former Rule, concerning the moſt notorious place. Co. Ibid.

any place. 8 When the Feoffée or Leſſée are abſent, then the moſt notorious place is to be obſerved, as hath been ſaid before: But if the Feoffée commeth to the Feoffor at any place upon any part of the ground at the day of payment, and offer his rent; Albeit they be not at the moſt notorious place, nor at the laſt inſtant of the day, yet the Feoffor is bound to receive it; or elſe he ſhall not take any advantage of any Demand of the Rent for that Day. Co. ibid. a. 2.

laim of a mainder. 9 Claim of a Remainder by force of a Condition ought to be upon the Land, and a Claim thereof made out of the Land is not ſufficient: So if a Villain purchaſe a Reverſion, the Claim of the Lord ought to be upon the Land. See Litt. fol. 40. and the Book in 15 Aſſ. Pl. 12. is good Law, that a Diſtreſſe upon the Land after the Condition broken, amounts to a Claim of the Reignior, unto which it was annexed. Co. l. 2. 54. a. 2

here actions e to be ught. 10 A. recovers 20 l. againſt B. in the Common Pleas by Action laid in Norfolke, and dies; C. in the Name of A. (upon the judgment before Execution) out-lawes B. in London, and afterwards takes him upon a Capias Utlagatum in Norfolke, and impriſons him there two Moneths: Hereupon B. brings his Action of the Caſe againſt C. in Norfolke, and counts, that to out-law him Malicioſè & de captivè machinatus eſt: And the doubt in this Caſe was, whether or no, the Action of the Caſe were rightly laid in Norfolke, or ſhould have rather been laid in London, where the Out-lawry was had, which cauſed the impriſonment, and a forfeiture of all the Goods of B. But it was reſolved, that it was well laid in Norfolke; becauſe the firſt Action was brought there, and there alſo was the viſible fact, viz. the Impriſonment: For, it is a Maxime in Law, Quod ibi ſemper debet fieri triatrem, ubi Juratores meliorem poſſunt habere facti notitiam. When matter in one County dependeth upon matter in another County, the Plaintiff hath Election to bring his Action, in which of the two he pleaſeth, (except the Plaintiff upon the general iſſue pleaded, may be prejudiced in his trial) as if two conſpire in one County to indict another in another County; and ſo it, an Action may be brought in either; Howbeit, if any other but the Conſpirators indict him, it ſhall be brought, where the Conſpiracy was. If Manaſſe be mad in Eſſex, whereby my Tenants recive in London. I ſhall have my Action in Eſſex, and not in London, for I have nothing in London. If an action be founded upon two things material and traverſable in two ſeveral Counties, an Action may be brought in either Co. l. 7. 1. *Bulwers* Caſe. Vide *Ho.* 195. *Hall & winkfield.*

either of them. An Annuity granted in one County to be paid in another, the action shall be brought, where the Grant was. He that is robbed may have an Appeal of Felony for it in every County, where the Goods; but an Appeal of Robbery will lye onely, where the fact was done, a Lease for yeares made in one County, of Land in another, Debt shall be brought, where the Lease was made, and waste also where the Land lyeth. Every Action which concerns the life of a man, shall be brought, where the offence was committed. Every issue which ariseth upon an action, in which Land shall be recovered, shall be brought where the Land lyeth, as in right of Ward of Land or Body, intrusion of Ward, forfeiture of Marriage, valore maritagii, and Quare Impedit: But Ravishment of Ward, where the Ravishment was, and a Quare non admisit, where the refusal was. Before the Statute of 7 R. 2. cap. 10. An Action for Land in divers Counties, or for Common in one County appendant to Land in another, was brought by several Writs in both Counties; but since that Statute by one Writ in Comitatu Comitatum; A per que servitia shall be brought, where the note of the fine was levied.

Dier 46. 8. 31 H. 8. 11 At the Common Law if a man had been wounded in one County, and had died in another, the Venire to try the Issue should have been out of both Counties, (except in London and Middlesex, because such a Jury there could not joyne,) and in such case the Issue was onely tryable in the K. B. but this Law is altered by 2 & 3 E. 6. 24. The Venue where.

Dyer 38, 50. 29 H. 8. 12 An appeal was brought against two accessaries for abetting in London to a Robbery committed in the County of Wilts, and the appeal was brought in the County of Wilts, but by the better opinion it seemes it ought to have been brought in London, where the Abetment was, because the Jury there might have best notice thereof: but this is now also setled by 2 & 3 E. 6. 24. Appeal, where brought.

Dyer 51. b. 18. 33 H. 8. 13 If a man maks a Lease for yeares, rendring rent, and if the rent be behind by the space of a Moneth after the day of payment, that then the term shall cease; In this case if the rent is reserved to be paid at some place out of the Land, upon failer of payment or due tender of the rent at that place, the Lessor may enter without making any Demand upon the Land; but if the rent were payable upon the Land, or no place named, where it should be paid, upon such failer, the Lessor cannot enter without demanding the rent upon the Land, because the rent is payable there of right. Demand of rent.

Co. l. 5. 83. b. in the Case of Market overt. 14 If Plate be stolne and sold openly in a Scriveners Shop upon the Market day, (for every day in London is Market day, except Sunday,) such Sale shall not alter the property, but the party shall have restitution; for a Scriveners Shop is not a Market overt for Plate, because none will look there for any such thing, Et sic de similibus, &c. but if the Sale had been openly in a Goldsmiths Shop in London, so as every one that should stand or passe by the Shop, might have seen it, such sale shall alter the property; Howbeit, if such Sale be in a Goldsmiths Shop, behind a curtain, banging, cubbord, in a Warehouse, or some other part of the House; So as passengers cannot observe it, such Sale shall not alter the property; for such places are no Market overt; And observe, that the reason of this case extends to all the Markets overts in England. Vide Max. 186, 32. & 191, 3. Market overt.

Dyer 270. 25. 10 Eliz. 15 In Debt upon an Obligation to performe Covenants brought in London, the Issue was, whether or no the Defendant was verus possessor of certaine Lands in the County of Bedford, at the time of the Indentures. Place of v

Indenture; and it was the opinion of the Court that the moſt apt place for that triall was in Com. Bedford, and not in London. Vide Dyer 305, 58.

rial in *Ire-nd.*

16 If a Peer of Ireland commit Treaſon in Ireland, he cannot be tried in England, by the Statutes of 26 H. 8. 13. 35 H. 8. 2. 5, 6 E. 6. 11. for he is not a Subject of England, but of Ireland, and the triall in Ireland, is by Parliament, and not per Pares. Dyer 360. b. 20 Eliz.

ender of nt.

17 If a Rent be reſerved upon a Leaſe, and the Leſſee bound by Obligation to pay it; In this Caſe, the Leſſee is bound to pay it without demand; Howbeit, he is not bound to ſeek the Leſſor, but to tender it onely upon the Land; for he hath bound himſelf to pay it, but ſtill as a Rent, and at the place which the Law aſſignes. Hob. 8. *Bakers* Caſe.

ebt for Ar-rages.

18 In Debt brought by an Executor for Arrearages of a Rent-charge, due in the life of the Teſtator, the action ought to be brought in the County where the Land lyeth, out of which it iſſueth. Hob. 37. *Pines* Caſe.

19 Vide Hob. 78. Don Diego, &c. concerning Cauſes triable in the Admiralty, &c. 79. Palmer againſt Pope.

Maximes of Reaſon taken out of Morality.

135 The Law favoureth Charity.

ender by any r an Ideot.

1 Upon a Mortgage, if the Mortgageor die, his heires within age of 14 yeares, (where the Land is holden in Soccage,) the Guardian in Soccage: or within age of 21 yeares, (the Land being holden by Knight-ſervice,) the Lord ought to tender the Money for the redemption of the Land: but if the heir be an Ideot, of what age ſoever, any man may make the tender for him, in reſpect of his abſolute Diſability; for the Law in this, and like Caſes, is grounded upon Charity. Co. Inſt. p. 1. 206. b. 4.

oſpitals.

2 Albeit upon the foundation of any lay Hoſpital, or after, it was ordained, that one or more Prieſts ſhould be there maintained to celebrate Service to the Poore, and to pray for the Soul of the Founder, and all Chriſtian Soules, or the like, and that the Poore there ſhould make like Diſſons; yet ſuch Hoſpital is not within any of the Statutes of 27, 31, 32, & 37 H. 8. or of 1 E. 6. for the makers of thoſe Statutes never intended to overthrow works of Charity, but to take away the abuſe, and ſuch Hoſpitals being Lay, and not Religious, and for the moſt part founded or ordained in that manner. Co. ib. 342. a. 2

onſuit in ainct per-mptory.

3 In an Attaint, if the Plaintiff after appearance be non-ſuit, it is peremptorie, and the reaſon is for the faith and credit; that the Law (in Charity) gives to the verdict, and for the terrible and fearful judgment, that ſhould be given againſt the firſt Jury, if they ſhould be convicted; And therefore upon ſuch non-ſuit the Plaintiff ſhall be impriſoned, and his ſureties amerced. Co. ib. 139. a. 3.

haritable ſes.

4 Good and Charitable Uſes are not taken away by the Statute of 23 H. 8. 10. albeit the words of the Statute are general, viz. all like uſes: but the intention of the Makers of that Statute was onely to take away Superſtitious Uſes, and not Good and Charitable Uſes. Co. l. 1. 24 a. 2. in *Porters* ca.

ntire Services

5 Regularly where intire Services are reſerved, if the Lord purchaſe part of the Land, the whole Service is extinct; Howbeit, when ſuch intire Service is are reſerved for works of Devotion, Piety, or Charity, as to marry a poor Virgin yearly, (which Tenure you ſhall find in 24 H. 8. Br. Tenures 53.) or to find a Preacher, or Ornaments Co. l. 6. 1. b. 4. in *Bruertons* Caſe.

for such a Church (as you have it in 35 H. 6. 6.) in such cases, albeit the Lord purchase part, yet the intire service shall remain.

Co. l. 10. 28. a. 4. in the Case of *Suttons* Hospital. Future Co

6 The Kings Licence by Charter to found an Hospital, Chantery, &c. are sufficient to make them Corporations capable of endowments, though they be not yet built, or prepared for such purposes or imployments: because the Kings Charters for Erection of Pious and Charitable Workes are to be taken in the most benigne and beneficial sence.

Co. l. 10. 92. b. 4. in *Leyfields* Case. A Deed not shewed, good

7 Regularly, a copy or proof of a Deed shall not be given in evidence to a Jury, but the Deed it self ought to be produced; yet if a man hath by casualty had all his Writings burnt, so as he cannot possibly produce it, if that be proved to the Judges, they may in favour of him, that hath sustained so great Losse, suffer him upon the general issue to prove the Deed by witnesses in evidence to the Jury; least they should adde affliction to affliction: And if the Jury find it, albeit it were not shewed in evidence, yet is it good enough, as appeares 28 Ass. p. 3. And this in charity to him, that hath suffered such losse. Vide 28 H. 8. Dyer 29. b. Pl. 199.

Ho. 136. *Floods* Case. Devise

8 A Devise of Lands to a Colledg is good, notwithstanding the Statutes of Mortmain, because within the Statute of 43 Eliz. of Charitable Uses, under these words limited and appointed: See there also the next Case, a Devise for the repaire of an High way; where albeit the Devise be void, yet the Statute of 43, by reason of the said words (limited and appointed) doth reach it. Collisons Case.

136 *De mortuis nil nisi bonum.*

Littl. §. 399. Co. Inst. p. 1. 244. a 3. Co. l. 8. 101: a: 3. in Sir *Rich. Lechfords* case. Bastard eigne, and Mulier puisne.

1 If there Bastard eigne and Mulier puisne, and the Bastard have issue, and die seised of the Land without claime of the Mulier, in this case the Mulier is barred for ever, albeit the Mulier were under age at the time of the discent cast, whereas the discent (in their cases) onely puts him that right hath to his action, and doth not barre him for ever: And one of the reasons hereof (semes to be, because after the Bastards death, he shall not be branded by the name of Bastard, to the prejudice of him and his issue after him: For, Justum non est aliquem post mortem facere bastardum, qui toto tempore vitæ suæ pro legitimo habebatur: And therefore if there be Bastard eigne, and a Daughter Mulier puisne, and she be covert at the time of the Discent, yet is she barred; Also if the Bastard die not, but enter into Religion, by which a Discent is cast, that shall also barre the Mulier for ever; Likewise discent of Services, Rents, Reversions upon an Estate tail, or for life, &c. which barre not the entry of those, that right have, shall barre the Mulier for ever: So if the Bastard die, and his issue endow the Bastards wife, the Mulier cannot enter upon the widdow, but is barred causa qua suprà.

Co. l. 7. 43. in *Kennes* Case. Divorce.

2 A Sentence of Divorce may be repealed after the death of the parties, but after their death there can be no Sentence of Divorce given to declare the mariage void; for that were to traduce the Dead, and to bastardise the issue to the shame of the deceased.

Co l. 8. 101. b. 4. in *Sir Rich. Lechfords* case. Bastardie

3 If a Bastard eigne enter, and die seised, his wife being with child of a Sonne, and after the Sonne is borne, he shall inherit the Land; for in as much as the Father dies in possession, without interruption, the Mulier shall not alleadge against the issue Bastardy in his Father after his death.

137 And therefore, it hateth malice and oppreſſion;

ſcious ap- 1 The Common Law abhorre malice in ſeeking the bloud of an- Co.l.5.110.a.
l. other without cauſe: And therefore if A. hath the Goods of B. by baile- in *Foxleys* ca.
ment or trover, and B. brings an appeale of Robbery againſt A. for taking them felonioufly, and it is found, that they were the Goods of the Plaintiffe and that the Defendant came by them lawfully; In this Caſe, the Plaintiff ſhall forfeit thoſe goods to the King for his falſe and malicious appeale, as it is adjudged in 3 E. 3. Title Corone, 367.

riſonment. 2 It ſeemes reaſonable, that one, who is in Priſon upon a recog- Fitz. 116. o.
niſance, ſhall have a writ of conſpiracy upon the Statute called Articuli ſuper cartas, 28 E. 1. 10. againſt the Recogniſee, if he finde him not Bread and water in Priſon.

3 Albeit a man in Priſon by proceſſe of Law ought to be kept in ſalva & arcta cuſtodia, and by the Law ought not to go out; though it be with a Keeper, and with the leave or ſufferance of the Gaoler; But yet impriſonment muſt be, cuſtodia and not pœna: for, Carcer ad homines cuſtodiendos non ad puniendos dari debet. Co. Inſt. p. 1. 260. a. 3.

laſe of 4 To prevent and avoid oppreſſion, injure, and injuſtice, the Co. ib. 266. a. 1
t. Law prohibits, that a Right, or Thoſe in Action ſhould be granted or transferred to a ſtranger: And therefore ſaith the Mirrour (cap. 2. §. 17.) Nul charter, nul vende, ne nul done vault pro penaltment, ſi le Donor neſt ſeiſie al temps de contracts de deux droits, viz. Del droit de poſſeſſion, Et del droit de propertie: Howbeit ſuch a right or thing in Action may be releaſed, becauſe that quits and confirmes the preſent poſſeſſion and property, and cauſeth no diſturbance, or injuſtice, but rather prevents them.

138 It favoureth Vertue.

139 Hateth Vice.

dation 1 A Remainder may enure upon Condition to marrie my Daugh- Pl. Co. 34. b. 4.
wful void. ter, or any other lawfull Condition precedent; But if the Condition be to kill a man, or to do any other unlawfull Act, the Remainder ſhall not be good, for the Condition being unlawful, it ſhall not be of force to gaine any thing in our Law.

rd. 2 A man makes a Leaſe for life to B, Remainder to the eldeſt Co. Inſt. p. 1.
Iſſue male of B. and to the heires males of his body, B. hath Iſſue a 3. 1.
Baſtard-ſonne, he ſhall not take the Remainder; for, qui ex damnato coitu naſcuntur inter liberos non reputentur: So it is alſo if a man make a Leaſe for life to B. the Remainder to the eldeſt Iſſue male of B. to be begotten of the body of Jane S. whether the ſame Iſſue be legitimate or illegitimate, B. hath Iſſue a Baſtard on the body of Jane S. this Sonne or Iſſue ſhall not take the Remainder, cauſa qua ſuprà; And it ſeemeth alſo, if after the birth of the Iſſue B. had maried Jane S. ſo as thereby the Iſſue becomes Baſtard eigne, and had a poſſibility to inherit, yet ſhall he not take the Remainder by the word Iſſue.

meat. 3 If the Wife Elope from her Husband, that is, if the Wife leave her Co. ib. 32. a. 4.
Husband, and goeth away and tarrieth with an Adulterer, ſhe ſhall loſe her dower, until her husband willingly without coertion Eccleſiaſtical be reconciled to her, and permit her to co-habit with him, all which is comprehended ſhortly in theſe two verſes:

Sponte virum mulier fugiens; & adultera facta,
Dote ſua careat, niſi ſponſi ſponte retracta.

And

And if she goeth willingly with or to the Adulterer, this a departure and a tarrying, albeit she remaineth not continually with the Adulterer, or tarrieth with him against her will, or he turne her away; also if she co-habit with her Husband by the Censures of the Church: In all these Cases she loseth her Dower; See more of this matter in the exposition upon the Statute of West. 2. 34. 13. E. 1. Vide Co. Inst. part. 2.

Bastard.

Co. lib. 123. a. 4. 4 Some hold, that the Bastard of a Niefe shall be a Villain, and others hold, that if a Villein hath a Bastard by a Woman, and after marrieth the Woman, that this Bastard is a Villain, but the Law is contrary in both Cases; For, Vice is so odious in Law, that albeit a Bastard be a reputed Sonne, yet is he not such a Sonne, in consideration whereof an use may be raised, because in judgment of Law he is nullius filius: And for the same reason, where the Statute of 32 H. 8. of Wills speaketh of Children, Bastard-children are not within that Statute, neither is the Bastard of a Woman a Child within that Statute, where the mother conveyes lands unto him. It was found by Verdict, that Henry the Sonne of Beatrix, which was the Wife of Robert Radwel deceased was borne per undecim dies post ultimum tempus legitimum mulieribus constitutum, and thereupon it was and judged, quod dictus Henricus dici non debet filius prædicti Roberti secundum Legem & Consuetudinem Angliæ constitutam, that being nine moneths, according to that of Esdras, Vide & interroga pregnantem, si quando impleverit novem menses suos, adhuc poterit matrix ejus retinere partum in semetipsa? & dixi non potest, Domine; Howbeit the Prince of Conde (father of the Prince now living, and in Rebellion against the King of France this present yeare 1652) was borne 14 moneths after the death of his father, and it was adjudged possible by the unanimous opinion of the Physicians of Montpeller, by reason of the excessive grieve, which the Lady was conceived to take at the death of her husband.

Appeale of the Lord for death or Rape by the Villein.

Co. lib. 123. b. Litt. §. 189, 190. 5 Regularly a Villain cannot sue an Action against his Lord, yet sinne and vice are so odious in the eie of the Law, that he may have against his Lord an Action of appeale of the death of his father or other Ancestor, whose heire he is: And if in such an appeale of death it be found for the Plaintiffe, the Villein is enfranchised for ever: Fleta l. 1. c. 5. Hinc enim est, quod eo ipso sunt hujusmodi Domini servos suos amissuri, cum de injuriis fuerint convicti. And there is no diversity herein, whether he be a Villain regardant or in grosse, although some have held otherwise. Likewise, if a Niefe be ravished by her Lord, she may have an appeale of Rape against him: For by the generall purview of the Statutes of Westm. 1. 13. West. 2. 35. 6 R. 2. 6. 11 H. 4. 13. & 1 E. 4. 1. that give the appeale of Rape, the Niefe shall have an appeale of Rape against her Lord: And it seemeth by the ancient Authors of the Law, that this so heinous an offence was severely punished by losse of eies and privy members: However of old time it was felony, which you may see at large in the second part of the Institutes upon West. 1. 13. see also more of Rape in the third part of the Institutes, cap. Rape.

Unlawfull Acts.

Co. lib. 206. b 2 6 Obligations or other transactions, with enjoyne men to doe any Act, which is malum in se, are invalid and not in Law: As if a man be bound, upon Condition, that he shall kill J. S. the bond is void: So if a man make a feoffment, upon Condition, that the Feoffee shall kill I. S. the Estate is absolute and the Condition void: so as he, who intends any unlawfull Act, is still by the Law crost in the designe, or purpose, he aimes at.

Bloud corrupt.

Dier 28. a 16. 31 H. 8. 7 Vice is so odious in the eie of the Law, that it will not suffer any to inherit, who derives his title through bloud tainted with any Capital

Capital offence: As if a man hath iſſue two Sonnes, and the eldeſt in the life of the Father is attainted for felony, and dies living the Father, and after the Father dies ſeiſed of the land in Fée, this land ſhall diſcend to the younger Sonne, as heire to his Father, if the eldeſt Sonne hath no iſſue living, but if he hath iſſue in life, who by the Law ſhould inherit the Land, if it were not for the Attainder, and albeit he hath committed no offence, yet the land ſhall not diſcend to him nor yet to the younger Brother, but ſhall eſcheate to the Lord of the Fée.

§ 140 *Intereſt Reipublicæ, ne maleficia remaneant impunita.*

Autre fois in-dict no good plea.

1 Where an Inditment is found inſufficient, the offender may be indicted again; for in ſuch Caſe Autre fois acquite, or convict is no good plea; becauſe that plea is allowed upon that Maxime of the Common Law, viz. that the life of a man ſhall not be put in jeopardy twice for one and the ſame offence; Howbeit this is intended upon a lawfull acquital or Condition, for otherwiſe his life was never put in jeopardy: but when the Inditment or other proceeding againſt him are inſufficient, he may be re-indicted: For the Law doth abhorre, that great offences ſhould paſſe un-puniſhed, according to theſe ancient Maximes of the Law and State, Maleficia non debent remanere impunita, & impunitus continuum affectum tribuit delinquendo, & minatur innocentes, qui parcit nocentibus. Howbeit if upon an inſufficient Inditment of felony a man hath had judgment, quod ſuſpendatur & collum, and ſo is attainted, which is the judgment and end, that the Law hath appointed for felony, in this Caſe, he ſhall not be againe indicted and arraigned, until that judgment be reverſed by Error. Co. l. 4. 45. a. 1 in *Vaux* his Caſe.

Waive goods ſtolen.

2 The Reaſon why bona waviata, (viz. ſuch chelme goods as a felon in flying waives, or leaves behind him) are forfeit to the King, and that the owner ſhall in ſuch Caſe loſe his property in them, is, becauſe of the negligence and default in the owner; for that he make not freſh ſuit to apprehend the felon; for, Intereſt Reipublicæ, ne maleficia remaneant impunita, & impunitas ſemper ad deteriora invitat: And therefore the Law hath impoſed this penalty upon the owner, that if the felon by his induſtry, and freſh ſuit be not taken, by ſuch default he ſhall loſe all his goods which the felon ſo leaves behind him. Co. l. 5. 109. a. 4 in *Fauxleys* Caſe.

Statutes taken intendment.

3 In many Caſes Penal Statutes ſhall be taken by intendment, and not according to the expreſſe words thereof, eſpecially, when it is to remedy a miſchiefe, in advancement of Juſtice, and for the ſuppreſſing of Crimes and heinous offences, of which ſee many examples in the book at large quoted in the margent. Co. l. 11. 44. b. in *Alexander Pollers* Caſe.

Exception.

4 In a writ of Reception, where after Replevin the party diſtraines againe for that ſame thing, the Sheriffe is commanded to apprehend the party ſo offending, and ſo to chaſtiſe him by amerciament, quod caſtigatio illa in caſu conſimili timorem aliis præbeat delinquendi. F. N. B. 72. h.

In breach.

5 A man was put into the Stockes upon ſuſpition of Felony, and another comes, who lets him go at large, this is felony at the Common Law de frangend. priſon. albeit the party, that eſcaped, be not indicted for felony. Dier 99. a. 60. 1 Mar.

Error.

6 In Banco Reg. in the Caſe of one Tripcony the Jury to the Niſi prius gave the Plaintiffe but 40 l. damages for the cutting of his right hand, and they were increaſed by the Juſtices to 100 l. becauſe this was matter apparent to the Court, and the offence and treſpaſs therein was carried about with the perſon; howbeit, in the Caſe of Sir John Bonham Dier 105. a. 4. 1, 2 P. M.

againſt the Lo. Sturton for Lander, where the damages were 500 Marks the Juſtices ſaid they could not leſſen them.

Dyer 211. 33. 4 Eliz. 7 By the better opinion, albeit the Statutes of 27 H. 8. 4. & 28. H. 8. 15. be penal, and ordaine, that Commiſſions to heare and determine pleacies ſhall be awarded to the Admiral and others to be named by the Chancellor, yet the Lord Keeper (being no Chancellor) may grant ſuch Commiſſions, and that for the neceſſity to puniſh ſuch offences. Admiral.

141 It favoureth Juſtice and right.

Co. Inſt. p. 1. 33. a. 11. 1 In a writ of Dower brought againſt the heire tout temps priſt is a good plea (before demand) to barre the woman of the meane values and damages, becauſe the heire holdeth by title, and doth no wrong till a demand be made; It is otherwiſe in a writ of Ayd, Coſtnage, &c. where the land and damages are to be recovered; for there ſuch a plea is not good: becauſe in that Caſe the Tenant of the land hath no title, but holdeth the land by wrong. Plea in dower.

Co. ib. 103. a. 14 & b. 1. 2 If there be Lord and Tenant by Homage Anceſtrel, and the Tenant alien the land in Fee, although it be but upon a Condition, which is performed at the day, yet is the tenure gone for ever, becauſe the privity and Eſtate being once diſcontinued, it is for ever after extinct: But if the land be recovered againſt the Tenant upon a faint title, and the Tenant recover the ſame again in an Action of an higher nature, there the Homage Anceſtrel remaines, for the right (which is favoureth in Law) was a ſufficient meane for the continuance thereof: ſo it is alſo, if he had reverſed it in a writ of Error. Homage anceſtrel continued.

Co. Inſt. p. 1. 143. a. 4. 3 Before the Statute of quia emptores terrarum if a man had made a feofment in Fee rendring Rent, he might have diſtrained for the Rent arrear of Common Right, and in Caſe he had made no reſervation of Rent or ſervice, yet the Feoffee ſhould then have held of the Feoffor by ſuch ſervices as the feoffor held over of the Lord paramount: ſo as albeit the Feoffor were negligent and made no proviſion or reſervation of Rent or ſervice, yet the Law it ſelfe ſo much regarded Equity and Juſtice, that it created a tenure, where the party was careleſſe and reſerved none. The Law reſerveth a tenure.

Co. ib. 153. a. 4 4 Remedies for rights are alwayes favourably extended: and therefore the grantee of a Rent-charge and Rent-ſecke may demand them after they are behind at any time, whether the Tenant be preſent or no, and it is not neceſſary, that the grantee ſhould demand them at the very time when they become due: It is otherwiſe of a Rent upon a Condition, becauſe that is penal and overthroweth the whole Eſtate, and therefore the time of demand (in that Caſe) muſt be certain, to the end the Leſſee, Donee, or Feoffee may be there to pay the Rent for the redemption of the Eſtate. Rights favourably extended.

Litt. §. 307. Co. ib. 194. b. 3 Litt. §. 3 08. 5 If a man be diſſeiſed, and the Diſſeiſor make feofment to two men in Fee, and the Diſſeiſee releaſeth by his deed to one of the feoffees; in this Caſe, it ſhall enure to both the Feoffees, becauſe they have a Rightfull Eſtate by Law, and come not in by wrong done to any: So likewiſe if the Diſſeiſor make a leaſe to one for life, the remainder to another in Fee, and the Diſſeiſee releaſe to the Tenant for life, this ſhall enure to him in remainder, and the Eſtate of the Diſſeiſee is thereby quite extinct, cauſa qua ſuprà. Releaſe to one joint-tenant.

Co. ib. 125. b. 3 6 The Statutes of 3, & 4 E. 6. cap. 4. and 13 El. cap. 6. which ordain Conſtats and Inſpeximus of letters Patents are to be favourably conſtrued for advancement of the remedy and right of the ſubject. *Conſtat & ſpeximus.*

7 Eſtopels,

ment ac-
ng to

7 Estopels, which bind the Interest of the Land (as the taking of a lease of a mans owne land by deed indented, and the like) being specially found by the Jury, the Court ought to judge according to the speciall matter; for albeit Estoples regularly must be pleaded and relied upon by an apt conclusion, and the Jury is sworne ad veritatem dicendam, yet when they find veritatem facti, they pursue well their oath, and the Court ought to judge according to Law and right: So also may the Jury find a warranty being given in evidence, though it be not pleaded, because it bindeth the right, except it be in a writ of Right, when the Mise is joyned upon the meere right. Co.lib.227.a.4

32 H.8.

8 Albeit the Statute of 32 H. 8. 33. (which gives entry to the Disseisée, or his heires, if the Disseisor were not in peaceable possession five yeares before the discent cast) be a penal Statute, yet it is taken favourably for the advancement of the ancient right: For whether the disseisin be with force or without force, it is within the Statute: and albeit the Statute speaketh of him, that at the time of the discent had title of Entry, &c. or his heires; yet the Successors of bodies Politique or Corporal (so you hold your selfe to a disseisin) are within the remedy of this Statute: but an Abator, Intrudor, or the Feoffée or Disseisor are not within the Statute, nor he in reversion, or remainder, that had not right of Entry at the time of the discent cast. Co.lib.238.a.

ry discent
not toll
.

9 Albeit the Law giveth much favour to descents, yet when the title of a discent commenceth by wrong, for the advancement of the ancient right, the Law tieth a discent to strict termes: and therefore when a discent is cast, if immediately after, there be not a person capable of it which may take it, such discent cannot toll the entry of him, that right hath, but his Entry is congeable. As if a Feme be seised of land in Fée, wherein I have title of Entry, and the Feme takes Baron, and they have issue, and after the Feme dies seised, and after the Baron dies, and the issue enters, &c. In this Case, I may enter upon the possession of the issue, because the issue comes not to the tenement immediately by discent after the death of his mother, but by the death of his father; For here was but a discent of a reversion at the time of the dying seised, so as the Fée and franktenement together did not immediately after the decease of the Feme discend to the heire; and if a dying seised taketh not away the Entry of him, that right hath, at the time of the discent, it shall not do it by any matter ex post facto: So if a Disseisor die without heire, his Wife priviment enseint with an issue, and after the issue is borne, who entreth into the land; In this Case, he hath the land by discent, and yet thereby the Entry of the Disseisée shall not be taken away, because (as Littleton saith) the issue cometh not to the lands immediately by discent after the decease of his father: Likewise, if a Disseisor make a gift in taile, the remainder in Fée, and the Donée dieth without issue, leaving his Wife priviment enseint with a sonne, and he in the remainder entet, and after the sonne is borne, who entreth into land, this discent shall not take away the entry of the Disseisée, causa qua suprà. Litt. §.394. Co.lib.241.b.

ent tolls
entry.

10 B. Tenant in taile enfeoffeth A. in Fée, A. hath issue within age and dieth, B. abateth and dieth seised, the issue of A. being still within age, this discent shall bind the infant for the issue in taile is remitted: And the Law doth more respect an ancient right in this Case, then the privilege of an Infant, that had but a defeasible Estate. Co. Inst. p.1. 246. a.2.

ent upon
ession, no
e.

11 No glorious pretext of an Act (who though it be of Religion) shall worke a wrong to a stranger, that hath right; to barre him of his entry; but it must be done by the Act of God; viz. by death: and therefore if the Disseisor have issue and enter into Religion; such a descent shall Co.lib.248.b.

ſhall not barre by the diſſeiſée of his entry, but he may well enter, notwithſtanding any ſuch proteſtion, or pretext of Religion.

Litt. §. 417. Co. ib. 252. a. 4. 12 If a man hath cauſe of entry into divers lands in ſeveral Townes in the ſame County, if he enter in any parcel thereof in the name of all, by ſuch entry he ſhall obtaine a good poſſeſſion and ſeiſin of all; The like alſo may be ſaid of Livery of ſeiſin: and this is in favour of right and Juſtice. Entry ſ be don

Litt. §. 472. Co. ib. 275. b. 4. 13 If a man diſſeiſed by two, and he releaſeth to one of them, he, to whom the releaſe is made, ſhall hold out his Companion, and by ſuch releaſe ſhall gaine the ſole poſſeſſion and Eſtate in the land: but if a Diſſeiſor enfeoffe two in Fée, and the Diſſeiſée releaſe to one of them, this ſhall enure to them both; becauſe theſe come in by feofment, but thoſe by wrong. Releaſe Diſſeiſo

Co. ib. 278. a. 3. 14 If two Diſſeiſors be, and they enfeoffe another, and take back an Eſtate for life or in Fée; here, albeit they remaine Diſſeiſors to the Diſſeiſée, as to have an Aſſiſe againſt them, yet if the Diſſeiſée releaſe to one of them, the releaſée ſhall hold out his Companion, becauſe their Eſtate in the land is by feofment: Again, if there be two Diſſeiſors, and they be diſſeiſed, and releaſe to their Diſſeiſor, and then the Diſſeiſée releaſe one or both of them, yet the ſecond Diſſeiſor ſhall re-enter, for they ſhall not hold the land againſt their owne releaſe: If their be two Femes joint Diſſeiſors, and the one taketh husband, and the Diſſeiſée releaſe to the other, ſhe is ſolely ſeiſed, and ſhall hold out the husband and wife, becauſe ſhe claimes by a juſt title, viz. by the releaſe, but they came in by wrong. Releaſe Diſſeiſo

Co. ib. 279. b. 1. Litt. §. 478. 15 Dormit aliquando vis moritur nunquam; for of ſuch an high eſtimation is right in the eie of the Law, that the Law preſerveth it from death and deſtruction; trodden downe it may be, but never trodden out; for where it is ſaid, that a releaſe of right doth in ſome Caſes enure by way of extinguiſhment; It is to be underſtood (as Littleton doth §. 478.) in reſpect of him, that makes the releaſe, or in reſpect that by conſtruction of Law it enureth not alone to him, to whom it is made, but to others alſo, who be ſtrangers to the releaſe, which is a quality of an inheritance extinguiſhed: As if there be Lord and Tenant, and the Tenant make a leaſe for life the remainder in fée, if the Lord releaſe to the Tenant for life, the Rent is wholy extinguiſhed, and he in remainder ſhall take benefit thereof; ſo when the heire of a Diſſeiſor is diſſeiſed, and the Diſſeiſor make a leaſe for life, the remainder in fée, if the firſt diſſeiſée releaſe to the Tenant for life, this is ſaid to enure by way of extinguiſhment, for that it ſhall enure to him in remainder, who is a ſtranger to the releaſe, and yet in truth the right is not extinct, but both follow the poſſeſſion, viz. the Tenant for life hath it during his time, and he in remainder to him and his heires, and the right of the inheritance is in him in the remainder; for a right to land cannot die, or be extinct in déed: and therefore if after the death of Tenant for life, the heire of the Diſſeiſor bring a writ of Right againſt him in the remainder, and he joine the Miſe upon the méer right, it ſhall be found for him, becauſe in judgment of Law he hath by the ſaid releaſe the right of the firſt Diſſeiſée. Right cannot die.

Co. ib. 3. 5. a. 1. 16 Remedies to come to rights or duties are alwayes taken favourably: and therefore there is a diverſity between money given by way of Attornment, and where it is given as parcel of a Rent by way of ſeiſin of the Rent: for albeit the Rent be not due before the day, yet a payment of parcel of the Rent before hand is an Actual ſeiſin of the Rent to have an Aſſiſe; and ſo it is alſo, if he give an Oxe, an Horſe, a Sheepe, a Knife, or any other valuable thing in name of ſeiſin of the Rent Remitter voucher in

Rent before hand, this is good, whereas money or any other thing given in name of attornment is onely a ſeiſin in Law, which the grantée hath before actual ſeiſin: So as a payment of part of the Rent in name of ſeiſin is more beneficial for the Grantée, being both an actual ſeiſin and an attornment in Law alſo; and yet being given before the day on which the Rent is due, it ſhall not be abated out of the Rent, in ſuch ſort that, as to give ſeiſin of the Rent; it is taken as part of the Rent, but as to the payment of the Rent, it is accounted as no part of the Rent; and ſuch prevarications the Law permits, when a right is concerned.

lemixters favoured in law.

17 If Tenant in taile diſcontinue, and hath iſſue a Daughter, and die, and the Daughter being of full age takes Baron, and the diſcontinuee releaſeth to the Baron and Feme for their lives, this is a Remitter to the Feme, and the Feme ſhall be in by force of the entaile; becauſe Remitters to antient Rights are much favoured in Law: It is otherwiſe of a diſcent, for if a woman be diſſeiſed, and being of full age taketh husband, and then the Diſſeiſor dieth ſeiſed, this diſcent ſhall bind the wife, albeit ſhe was covert, when the diſcent was caſt; becauſe ſhe being of full age, when ſhe took Baron, did not claime her Intereſt in the land. Litt. §. 671. Co. Inſt. p. 1. 353. b. 4.

ſtat. Weſt. 2. cap. 4.

18 There hath been a Queſtion in our Bookes upon theſe words of the Statute of Weſt. 2. cap. 4. (by default.) as for example, whether a recovery being had by default in an Action of waſte againſt Tenant in Dower or by the Courteſie, a Quod ei deforceat lyeth by the ſaid Statute; but (doubtleſſe) it doth: for albeit the Defendant may give in evidence, if he knoweth it, yet when he makes default the Law preſumeth he knoweth not of it, and it may be, that he in truth knew not of it; and therefore it is reaſon, that ſeeing the Statute, which is a beneficial Statute, hath given it him that he be admitted to his Quod ei deforceat, in which writ the truth and right ſhall be tried: And ſo it is alſo of a Recovery by default in an Aſſiſe, albeit the Recognitors of the Aſſiſe give a Verdict, a *Quod ei deforceat* lyeth; and all this, as to this point was reſolved in P. 33 El. Rot. 1125. And ſo the doubt in 41 E. 3. 8. is well reſolved: if Tenant for life make default after default, and he in reverſion is received and pleads to iſſue, and it is found by Verdict for the Demandant, the default and Verdict are cauſes of the judgment, and yet the Tenant ſhall have a Quod ei deforceat, in favour of Right and Juſtice, eſpecially when the Statute intends him as much. Co. lib. 355. a. a

he like.

19 If the Baron diſcontinue the land of the Feme, and the diſcontinuee demiſe the ſame land to the Feme for term of her life, and deliver ſeiſin accordingly; In this Caſe, it ſeemes whether the Baron agree or diſagree to the livery, it is a Remitter to the Feme, it is otherwiſe if ſhe had been ſole: but one of the reaſons why in that Caſe ſhe is remitted is, for that the Law having once reſtored her ancient and better right will not ſuffer the diſagreement of the husband to deveſt it out of her, and ſo to revive the diſcontinuance, and revеſt the wrongful Eſtate in the diſcontinuee; becauſe Remitters tending to the advancement of ancient rights are very much favoured in Law: ſo likewiſe, if lands be given to a man and the heires females of his body, and he maketh a feoffment in Fée, and taketh back an Eſtate to him and his heires, and dieth having iſſue a Daughter, and leaving his wife Groſſement enſeint with a Sonne, in this Caſe alſo, the Daughter is remitted, and albeit the Sonne be afterwards borne; he ſhall not revеſt the Remitter. Litt. §. 677. Co. lib. 356. b. 4

Litt. §. 678. Co. ib. 357. a. 3

20 If the Baron diſcontinue the land of the Feme, and the diſcontinuée is diſſeiſed, and after the diſſeiſor demiſeth the land to the Baron & Feme for term of their lives, this is a Remitter to the Feme; for Remitters that reſtore ancient right are ſo much favoured in Law, that the Eſtate made by the diſſeiſor (who cometh to the land by wrong and upon whom the entry of the diſcontinuée is lawful) doth remit the wife, and deveſteth all out of the diſcontinue, albeit he hath a warranty of the land. The like.

Litt. § 693. Co. ib. 363. b. 1

21 When the entry of a man of full age is congeable, if he take an Eſtate of the land for life, in taile, or in fée, he is thereby remitted, unleſſe it be by Indenture, matter of record, or otherwiſe, whereby he may be concluded or eſtopt: It is otherwiſe where he hath but right of action, for in that Caſe by taking ſuch an Eſtate he ſhall not be remitted, and ſo obſerve a diverſity betwixt right of action and right of entry, when his entry is lawful. Right of entry.

Co. l. 3. 86. a. 4. in the caſes of *Fines*. Iuſtice. *Windams* Ca.

22 Where alienation was made in mortmaine, 17 E. 3. 7. Pl. 20. A fine is levied of land holden in ancient demeſne, 31 E. 3. Tit. Ancient demeſne, 16. an infant levied a fine, 36 H. 6. 24. Pl. 19. A fine levied of the reverſion of land holden in Capite without licence, 45 E. 3. 6. or where Tenant in taile of a reverſion or remainder (before the Statutes of fines, 4 H. 7. & 32 H. 8.) had levied a fine thereof; in all theſe caſes and the like, the Tenant was not compellable to attorn, becauſe the Eſtate that paſſed by the fine was not lawful, but either prohibited by the Common Law, or by ſome Statute, and for the moſt part were voidable. Tenant not compellable to attorne.

Co. l. 4. 26. a. 4. in the *Copihold* caſes, in *Melwiches* Caſe.

23 The Leſſée of a Copi-holder for a yeare may maintaine an Ejectione firmæ, for in as much as his term is warranted by the Law by force of the generall Cuſtome of the Realme, it is reaſon, that, if he be ejected, he ſhould have an Ejectione firmæ, for that it is a ſpeedy courſe for a Copi-holder to gaine the poſſeſſion of the land againſt a ſtranger; being no more, then what right requires to be yielded unto him for the recovery of his Eſtate. *An Ejectione firmæ* grated to a Copi-holder.

Co. l. 5. 28. a. in the caſes of Executors, in *Middletons* Caſe.

24 An Executor before probat may releaſe an Action, albeit before probat he cannot bring an Action, becauſe of the right of Action that is in him at the Common Law, it is otherwiſe of an Adminiſtrator, for if A. releaſe, and after take adminiſtration, this ſhall not barre him, for the right of Action was not in him at the time of the releaſe made, Vide 18 H. 6. 43. b. Greysbrockes Caſe, Plowd. 277, 278. 21 E. 4. 24. To Executors prove the will, and the third refuſeth, yet he may afterwards releaſe, for the ancient right, that remaines in him, Litt. fol. 117. If one be bound to pay a ſumme at the day to come, before the day he cannot bring an Action of debt, yet a releaſe of all actions before the day barres him, becauſe of the preſent right and duty that he then had in him. Releaſe by Executor before probat good.

Co. l. 6. 1. b. in *Bruertons* ca.

25 If a man hold land by the ſervice of ayding the Sheriffe, or to be High-Conſtable of England, which are for the advancement of Juſtice (for the determination of divers caſes belong to the Court of the Conſtable and Marſhal, and the Sheriffe is a Miniſter of Juſtice) or if the tenure be, ad cuſtodiendum Recorda Domini Regis, as the Abbot of St. Barthelm. in Smithfield held (as appeares in the Records of the Tower in 7 R. 2. membr. 15. in Dorſ.) in theſe and the like caſes, if the Lord purchaſe parcel of the tenancy, yet the whole ſervice remaines, quia iſta concernunt adminiſtrationem Juſtitiæ. Tenure for Juſtice not extinct.

Co. l. 6. 62. a. 3. in *Gatesbies* Caſe.

26 In Gatesbies Caſe in the 5 Rep. the ſingle point in queſtion was, whether the ſix moneths of laps to give the Biſhop power to collate ſhould be accounted by 28 dayes for each moneth, or by the halfe yeare, and one of the reaſons there alleadged for the account by the halfe yeare was this: when a computation in ſuch caſe is ambiguous; it is always requiſite to determine it for the reliefe & remedy of him, that right hath, viz. A yeare for laps.

viz. of the Patron, and for the preservation of his right to allow him the longest time of the two, to the end he may not lose his right.

27 Upon the Stat. of 35 H. 8. 6. to return a Tales, albeit the title there- of in usually deem Tales, yet the Sheriffe (although there be but one Juror appeare or all be challenged but one) may at first return 11 to that one, because it is for the speeding of trials, and that Statute being ordained for the further ance and advancement of expedition in Justice shall have a benigne and favourable interpretation. Co. l. 10. 103. b. 2. in *Alfrid Denbawds* ca. 35 H. 8. 6

28 If a man be disseised of a Mannor, to which an Advowson is appendant, and the Advowson happen to be void, the disseisee may present, and have a Quare Impedit, albeit he hath not entred into the Mannor, by reason of the ancient right that is in him. F.N.B. 33. q. disseisee &c.

29 If a man traverse an Office found of a Mannor, to which an Advowson is appendant, and upon the traverse the King demiseth the Mannor to him without making any mention of the Advowson, and after the Church is void, here, he that tenders the traverse shall have the presentment, if the traverse be found for him. F.N.B. 34. p. ters. owson.

30 If a man recober an Advowson, and the six moneths are past, yet if the Church be void, the Patron may pray a writ to the Bishop, and shall have it, and if the Church be void, when the writ comes to the Bishop, the Bishop is bound to admit his Clerk; and it seemes also reason, if the Patron after the six moneths present to the Bishop, the Church being then void, that the Bishop ought to present his Clerk, in respect of the right, that is in the Patron. F.N.B. 38. f. tment he Bishop.

31 If the King write to the Justices to prorogue the Assise, because the defendant is in his service, &c. yet y Justices ought to proceed, and not to cease for that writ, because it is for the advancement of Justice and to do right. F.N.B. 153. h.

32 In Dive and Manninghams Case in the Commentaries, albeit the Defendant had pleaded Judgment si action, whereas he ought to have pleaded non est factum (Dive the Sheriffe having taken a bond of a man in execution to secure himselfe, which was void by the expresse words of the Statute of 23 H. 6. 10.) notwithstanding such default in right pleading, the Judges finding the Sheriffe to have no just cause of action (because that Statute made the bond clerely void) gave judgment against Dive the Plaintiffe. So H. 7. E. 4. 31. Fitz. Title judgment, 50. where an action of trespas was brought against Tilly and Woddy for five bores with writings taken, &c. Tilly pleads not guilty, and Woddy makes title to him by a gift, and the Plaintiffe traverseth the gift, and upon these matters they were at issue, and Tilly was found guilty, and the issue was found for Woddy and against the Plaintiffe: And here albeit the Issue was found against Tilly, yet by the clere opinion of the Court the Plaintiffe shall not have judgment against him, for it was found betwixt the Plaintiffe and Woddy; that the Plaintiffe had no title, and therefore the Judges (ex officio) ought to give judgment against him, vide plus ibid. Pl. Co. 66. b. 3. *Dive* and *Manningham* Case, & 84. b. 4. in *Partridges* Case. judges it to give ious ment,

33 If land be given to Baron and Feme in special taile, and after the husband alien the land in fee, and take backe an Estate to him and his wife for their lives; in this Case, y husband against his owne alienation (if he had taken the estate to himselfe alone) could not have been remitted; but when the estate is made to the husband and wife, albeit they be but one person in law and no moities between them, yet for that the wife cannot be remitted in this case, unlesse the husband be remitted also, and for that remitters are much favoured in law, because thereby the more ancient and better rights are restored again, therefore in this case in judgment of law both husband and wife are remitted. Co. Inst. p. 1. 354. a. 3. ner to and

34 If

Co.lib.194.a.3 34 A releaſe by the diſſeiſee to one of the diſſeiſors ſhall enable him to hold out his companion, becauſe they are to mercy by wrong; howbeit if two men be uſurps by a wrongfull preſentation to a Church, and their Clerk is admitted, inſtituted and inducted, and the rightful Patron releaſe to one of them, this ſhall enure to them both: for that the uſurpers came not in mercely by wrong, but their Clerk is in by admiſſion and inſtitution, which are Judicial Acts: and uſurpation ſhall work a Remitter to one that hath a former right. A releaſe uſurpation

Co.lib.297.a.2 35 There is a diverſity betwixt a bare aſſent without any right or intereſt, and an aſſent coupled with a right or intereſt: and therefore an Attornment cannot be made for a time or upon Condition, becauſe that is a bare aſſent; but if a Parſon make a leaſe for 100 years, the Patron and Ordinary may confirme 90 of theſe years, for they have an intereſt, and may change in time of vacation: ſo if a diſſeiſor make a leaſe for 100 yeares, the diſſeiſee may confirm parcel of thoſe years, but then it muſt be by apt words; for he muſt not confirme the leaſe or demiſe, or the Eſtate of the Leſſee, becauſe then the addition for parcel of the term would be repugnant, when the whole was confirmed before: but the confirmation muſt be of the land for part of the term, &c. Attornment Confirm

Co.lib.277.b.4 36 If A. diſſeiſeth B. to the uſe of C. and B. releaſeth to A. this ſhall take away the agreement of C. to the diſſeiſin, becauſe otherwiſe it ſhould make him a wrong-doer: ſo if the diſſeiſee be diſſeiſed, and the diſſeiſee releaſeth to the ſecond diſſeiſor; this taketh away the right of the firſt diſſeiſor had againſt the ſecond; for a relation of an Eſtate gained by wrong ſhall never defeat an Eſtate ſubſequent gained by right; againſt a ſingle opinion in 14 H. 8. 18. never ſeconded by any other caſe.

Hob. 13. Sir *Daniel Nortons* Caſe. 37 If the Under-Sheriffe Covenant with the High Sheriffe, that he will not ſerve executions of above 20 l. without his ſpecial warrant, this Covenant is void, becauſe it is againſt Law and Juſtice. Skinn.

142 That, which is not tortious in it ſelfe, cannot be tortious to any.

Co.lib.11.98. b. 1. in *Edw. Seymers* Caſe. 1 If there be Tenant in taile, Remainder in taile, the Reverſion in Fee to the Tenant in taile, the Tenant in taile bargaines and ſels the land and levies a Fine to the bargainee, who enfeoffes I. S. in this Caſe, by the feofment of the bargainee to I. S. the Remainder in tail is not diſplaced or put to a right; for the bargainee had an Eſtate in Fee-ſimple determinable upon the death of the Tenant in taile without iſſue, and when he made the feofment his determinable Fee-ſimple in poſſeſſion and his abſolute Fee-ſimple expectant upon the Eſtate taile in remainder did paſs and did not devell the remainder: for the feofment, which is not tortious in it ſelfe, cannot be tortious to another. Remainder not deveſted

143. *Intereſt Reipublica, ne Curia Domini Regis deficeret in Juſticia exhibenda.*

A Letter of Attorney, a Pannell.

1. If a man make a Letter of Attorney to two, to do any act, if one of them dye, the ſurvivor ſhall not do it; but if a Venire facias be awarded to four Coroners to impannel and return a Jury, and one of them dye, yet the other ſhall execute and returne the ſame, becauſe this laſt is for the execution of juſtice. Co. Inſt. part 1. 181. b. 3.

Tenants in common ſhall joyne in aſſize.

2. If there be two Tenants in Common of 20 s. Rent, a pound of Pepper, or ſuch like thing as will admit ſeverance, if they be arreare, they ſhall bring ſeveral Aſſiſes for them, becauſe of their ſeverall titles; but if the Rent be an intire thing, which cannot be ſevered or divided, as an Hawke, Horſe, or the like, in ſuch caſe they ſhall joyne in the Aſſiſe, for otherwiſe they ſhould be without remedy; and thus they muſt do, Ne Curia Dom. regis, &c. And Lex non debet deficere conquerentibus in juſticia exhibenda; beſides, if they ſhould not joyne, they ſhould have damnum & injuriam, and yet ſhould have no remedy by Law, which would be inconvenient, for the Law will that in every caſe where a man is wronged and endamaged, that he ſhall have remedy: Aliquid conceditur ne injuria remanent impunita, quod alias non concederetur: *Vide plus ibidem.* Co. ibid. 197. a. b.

Villaine.

3. A man cannot be properly ſaid to be diſpoſſeſt of a Villain, either in groſſe, or regardant (unleſſe he be diſpoſſeſt of the M. too) for otherwiſe the Law would have given a remedy againſt the wrong doer, as the Law doth in caſe of a Ward, becauſe the Lord may ſeiſe his Villain wherſoever he finds him. Co. ibid. 307. a. 1.

The Leſſee of Copy-holder may have an Ejectment.

4. The Leſſee of a Copyholder for a year may maintaine an Ejectione firme, for in as much as his terme is warranted by the Law, by force of the generall cuſtome of the Realme, it is reaſon, that if he be ejected he ſhould have an Ejectione firme, for otherwiſe he ſhould be without remedy: And Intereſt reipublicæ, ne Curia, &c. Co. l. 4. 26. a. 4. in *Melwitchet* caſe.

Stat. Weſt. 2. 28.

5. The Statute of Weſtm. 2. ca. 28 provides, Quod quotieſcunque de cetero exercerit in Cancelleria, quod in uno caſu reperitur breve, & in conſimili caſu, cadente ſub eodem jure, & ſimili indigente remedio, non reperitur: concordent Clerici in Cancelleria in brevi faciendo, &c. vel ad proprium Parliamentum de conſenſu Juriſperitorum fiat breve. And then concludes with this Maxime in Law, Quod Curia Domini Regis non debet deficere conquerentibus in juſticia perquirenda. Upon which Statute and ground divers things are admitted, in conſimili caſu. Vide plus ibidem. Co. l. 7. 4. a. 2. in *Bulwers* caſe.

No error before full Judgment.

6. The Defendant in account, after judgment to account, and before judgment finall brings Error, but it was not allowed; ſo in an action brought againſt two, one pleads to the iſſue, and the other confeſſeth it, and thereupon judgment paſſeth againſt him, yet he ſhall not have Error till the plea be determined againſt the other: Vide plus ibidem. And the reaſon of theſe and the like caſes is, becauſe if the Record ſhould be removed before the whole matter be determined, there would be a Failer of Right; for the Judges of the Kings Bench cannot proceed upon a matter which is not yet determined. Co. l. 11. 36. a. 4. *Medcalfes* caſe.

Returne of the Sheriff.

7. If a Sheriff returne upon a Replevin (alias or pluries) that he hath ſent to the Bailiff of the Franchiſe, who hath made him no return, or that he will not make deliverance of the Cattle, in ſuch caſe a Non omittas ſhall iſſue forth (alias & pluries) to cauſe the Sheriff to enter the Liberty, and to make returne; or if the Bailiff make no return, or will not make deliverance, it ſeemes that by the Statute of Weſt. F. N. B. 68. f. g.

1. ca. 27. upon ſuch returnes the Sheriff may (without Writ) enter the Liberty and make deliverance of the Cattell, in like manner as the Sheriff may do by the Statute of Marlebridge ca. 21. where a plea De vetit. Nav. is in the County by plaint before the Sheriff, and the Sheriff ſends to the Bailiff of the Liberty to make deliverance, and he doth nothing, in this caſe alſo the Sheriff may (without Writ) enter the Liberty and do it. Likewiſe if the Sheriff upon a Pluries returne, that the Defendant hath conveyed the Cattell into another County, or that he hath commanded the Bailiff of the Franchiſe, who returnes that the Cattell are eloined into divers Liberties, ſo that he cannot have the view of the cattell to make deliverance, or that the Defendant hath eloyned the Cattell into divers places unknown, or that the Defendant hath imparked them in the Rectory of the Church of O. that hee cannot make deliverance, &c. Upon theſe returnes of the Sheriff the Plaintiff ſhall have a Writ of Withernam, to take ſo many of the Defendants Cattell, and detaine them in Pound, untill the Defendant produce the Plaintiffes: And all this is, Ne Curia Domini Regis, &c.

Pl. Co. 36. a. 3. in *Plats* caſe. 8. The Statute of 1 R. 2. 12. which gives an action of debt againſt the Warden of the Fleet for ſuffering a Priſoner (being in upon Judgement) to go at large without Writ, is extended by equity to all other Keepers of Priſons, although it be a penall Statute; and that is for the better execution of juſtice, and that the Creditors debts may be the ſooner diſcharged. The Extent of 1. R. 2. c. 12.

Co. Inſt. pars 1. 294. 4. 9. If there be not foure Knights in the County for the electing of the twelve choſen for the tryall of the meere right in a Writ of Right, when the Miſe is joyned upon the meere Right, the next to them in the County ſhall be taken, Ne Curia Regis, &c. Writ of right.

Co. l. 7. 4. a. 4 in *Bulwers* caſe. 10. If there be Lord and Tenant, and the Tenancy extends into two Counties; in this caſe, if the rents and ſervices are arreare, the Lord ſhall have ſeverall Writs of the Cuſtomes and Services, for each County a Writ, and ſhall have them returneable at one day in the Bench; but he ſhall have but one Count upon them as his caſe is, Quia aliter Curia Domini Regis deficeret conquirentibus in juſtitia proquirenda. Two Writs, Count.

F. N. B. 26. h. 11. Upon a Reſcous returned by the Sheriff, and thereupon an Attachment awarded againſt the party, in this caſe he ſhall not appear by Attorney but in perſon, and ſhall immediately upon his appearance be committed to the Fleet, Nam expedit reipublice, &c. Reſcous.

Litt. S. 438. Co. Inſt. pars 1. 260. a. 3. 12. Alb it the Law in divers reſpects favoureth a Priſoner, ſo as a Recovery then had againſt him by default, ſhall be reverſed by Error, a deſcent then caſt againſt him ſhall not annoy him; yet it will not priviledge him from ſuits, or Outlawries: for if the Tenant or Defendant be in Priſon, hee ſhall upon motion, by order of the Court, be brought to the Barr, and either anſwer according to Law, or elſe, the ſame being recorded, the Law ſhall proceed againſt him, and he ſhall take no advantage of his impriſonment. Proceedings againſt a Priſoner.

Dyer 1. 5. & 6. p. 4 H. 8. 13. A Writ of error was brought by the feoffee of the Conuſee of a Statute, becauſe the Conuſee had had execution two yeares before the day of payment; albeit the Feoffee was a ſtranger to the Record, 18 E[illegible]. So alſo in 32 E. 3. A Scire facias was brought by the Grantee of the reverſion againſt him that had execution of the Land by reaſon of a Statute Merchant, and to obtaine the Scire facias alledged, that the Conuſee had received his duty, &c. And yet the grantee was neither party and privy: likewiſe if a Parſon hath an annuity and recover, and after the Church is appropriate to a religious Houſe, the Soveraigne of Error brought by a ſtranger.

the

the Houſe, though he be not party, ſhall have a Scire facias: ſo it is alſo (as is ſaid) of two Benefices united. Vide Rule 145.

Leet. 14. If a Jury in a Leet refuſe to make preſentment, the Steward may aſſeſſe a Fine upon each of them for contempt and concealement, and if the Homage in a Court Baron refuſe to do it, if they be Copyholders, it is a forfeiture. Dyer. 211 31. 4. Eliz.

15. If the Sheriff returne Reſcous, the party ſhall have Travers, by the word Convincatur, in Weſt. 2. ca. 40.

Piracy. 16. One Cobham being indicted of Piracy, ſtood mute, for he anſwered not directly, and therefore had Judgement of Paine fort & dure, by the Statutes of 27 H. 8. 4. and 28 H. 8. 15. Howbeit, he might have had his Clergy, if he had demanded it, by the Statute of 1 E. 6. 12. where Piracy is not mentioned. Dyer 241. 49. 7. Eliz.

144. It favoureth Common Right.

Aſſignment of Dower. 1. Dower being a thing due of Common right, it may be aſſigned without Livery of ſeiſin or writing, and before the Guardian in Chivalry enter, the Heire within age may aſſigne Dower, cauſa qua ſupra. Co. Inſt. part 1. 35. a. 3.

Common right is common Law. 2. Where the Tenant holds his land of his Lord by fealty and certaine rent, or by homage, fealty, and certaine rent, or by other ſervices and certaine rent, and the rent is arreare at a day when it ought to be payd, in this caſe the Lord may diſtrain for the rent of common right, ſo if a man demiſe land to another by Deed or without Deed, for life or yeares, rendring rent, if it be arreare, &c. the Leſſor may diſtraine for it of common right, albeit there be no clauſe of diſtreſſe compriſed in the Deed, or otherwiſe: And when it is ſaid, That a man may doe a thing of common right, it is as much as to ſay, that he may do it by the common Law: And the common Law is called Common right, becauſe it is the beſt and moſt common birth-right that the Subject hath for the ſafegard and defence, not onely of goods, lands, and revenues, but of his Wife and Children, his body, fame, and life alſo: And when it is ſaid, that a man may diſtraine, or do, or have any thing of common right, it is as much as if it were ſaid, he may do or have it by the common Law, without any reſervation or proviſion of the party. It is worth obſervation, that the common Law of England is ſometimes called Right, ſometimes common Right, ſometimes Communis juſticia: The French alſo call their municipall Law, Droit, which in their vulgar tongue ſignifies Right. In the great Charter the common law is called Right, Rectum: Nulli vendemus, nulli negabimus, aut differemus Juſticiam vel rectum. In Weſt. 2. ca. 1. it is called Common Droit: In primes voet le Roy & commande, que le pais de ſaincte Egliſe, & de la terre ſoit bien garde & maintaine en touts points, & que Common droit ſoit fait a touts, auxibien aux povres, come aux riches ſans regard de nullus: which agreeth with the ancient law of King Edgar, Porro autem has populo, quas ſervet, proponimus leges, primum publici Juris beneficio quiſquam fruitur idque ex æquo & bono, ſive is dives ſive inops fuerit, jus Redditur. And Fleta ſaith, Item quod pax Eccleſiæ & terræ inviolabiliter obſervetur, & quod communis Juſticia ſingulis pariter exhibeatur. Alſo all the Comiſſions and Charters for execution of Juſtice, are, Facturi quod ad juſticiam pertinet ſecundum Legem & conſuetudinem Angliæ: So as in truth Juſtice is the Daughter of the law or common right, for the law bringeth her forth; and in this ſenſe being largely taken, as well the Statutes and Cuſtomes of the Realme, as that which is properly the common law, is included within Common Right. Co. ibid. 142. a. 4.

Co. Inſt. pars 1. 147. b. 4. Litt. S. 212.

3. If a man hath a Rent charge to him and his heires iſſuing out of certaine land, if he purchaſe parcell thereof to him and his heires, all the Rent-charge is extinct, and the annuity alſo, and one of the reaſons thereof is, becauſe the grant of a Rent-charge out of Land is againſt Common right.

Rent-charge extinct by purchaſe of parcell.

Co. ibid. 215. a. 3.

4. By the Common Law no Grantee or Aſſignes of a Reverſion could take advantage of a re-entry by force of a Condition, becauſe it was againſt Common right: but this is now altered by the Statute of 32 H. 8. ca. 34. Yet at this day ſince the Statute, a Grantee of part of the Reverſion ſhall not take advantage of a Condition no more then he could before that Statute: As if the Leaſe be of three acres, reſerving a rent upon Condition, and the reverſion is granted of two acres; in this caſe, albeit the rent ſhall be apportioned by the act of the parties, yet is the Condition deſtroyed, for that it is intire, and alſo againſt common right, and therefore ſhall not be taken by Equity or implication upon the words of the Statute, being without the expreſſe words thereof.

A Grantee of part of a Reverſion ſhal not take advantage of a Condition.

Co. ibid. 225. b. 2.

5. There is a difference between a rent and a re-entry, for upon a gift in tayle or a Leaſe for life, a rent may be reſerved without Deed, becauſe it is naturall and agreeable to Law, that rent ſhould be reſerved out of Land: but a Condition with a re-entry cannot be reſerved in theſe caſes without Deed, becauſe that is collaterall, unnaturall, and againſt Common right.

A Re-entry cannot be without Deed.

Co. 4. 37. b. 3. Vide Co. l. 8. 79. in *Wiat Weilds* caſe.

6. There is difference between Common appendant and Common appurtenant, for Common appendant may be apportioned, becauſe it is of Common right, and therefore (in that caſe) if the Commoner purchaſe parcell of the land, in which, &c. yet the Common ſhall be apportioned, as if the Lord purchaſe parcell of the tenancy, the rent (being not intire) ſhall be apportioned; ſo if A. hath Common appendant in twenty acres of land, & enfeoffe B. of parcell thereof, this Common ſhall be apportioned, and B. ſhal have Common pro rata, and if he be inveſted ſhall make a ſpeciall preſcription for his Common. It is otherwiſe of Common appurtenant, which is againſt common right; for by purchaſe of part of the land, in which, &c. the whole common is extinct.

Common appendant may be apportioned, not common appurtenant.

Co. l. 6. 58. a. 4. *Bredimans* caſe. Co. ibid. 58. b. 3.

7. Leſſee for years pays a rent ſeck, this is not ſuch a ſeiſin as is required in an Aſſiſe againſt the tenant of the frank tenement, and one of the reaſons alledged for this reſolution is, becauſe a rent ſeck is againſt common right, and therefore ſhall not be favoured in Law, but the ſeiſin ought to be given by the tenant of the frank tenement himſelfe: And upon the grant of a rent charge or rent ſeck, attornment or ſeiſin ought to be made or given by all the tenants that have intereſt in the land, out of which, &c. becauſe they are againſt common right, and therefore not favoured in Law.

Seiſin of Rent ſeck by the Leſſee for years not good.

Co. l. 8. 105. b. 3. in *John Talbots* caſe.

8. In moſt caſes where the Lord purchaſeth part of the tenancy (eſpecially if the tenant hold by an Intire ſervice) the whole ſervice is extinct, howbeit although the Lord purchaſe parcell of the tenancy, Homage and Fealty ſhall remaine for the reſidue, becauſe they are due of common right.

Homage and fealty remain.

Co. l. 8. 118. a. 2. in Doctor. *Bonhams* caſe.

9. When an Act of Parliament is againſt common right and reaſon, or repugnant, or impoſſible to be performed, the common Law doth controll it, and adjudgeth ſuch an Act voyd: And therefore in 8 E. 3. 3 Thomas Tregors caſe, upon the Statute of Weſtm. 2. c. 38. and Artic. ſuper Car cap. 9. Herle ſaith, Some Statutes are made againſt Law and right, which thoſe that made them, perceiving, would not put them in execution. The Statute of Weſtm. 2. cap. 21. gives a Writ of Ceſſavit heredi petenti ſuper heredem tenentem, & ſuper eos, quibus alienatum fuerit hujuſmodi tenementum. And yet where in 33 E. 3. tit. Ceſſavit 42.

Acts againſt common right void.

there

there were two Coparceners Lords and Tenant by fealty and certaine rent, the one Coparcener had iſſue and dyes, the other and the Neece could not ioyne in a Ceſſavit, becauſe the heire could not have a Ceſſavit for the Leſſee in the time of her Anceſtor (F. N. B. 209. f. and with this accords Plowd. Com. 110.) and the reaſon hereof is, becauſe in Ceſſavit the tenant before judgment may render the arrerages and damages, &c. and retaine his Land, and this he cannot do when the heire brings Ceſſavit for the Leſſee in the time of his Anceſtor, for the arrerages occurred in the life of his Anceſtor belong not to him; and thereupon, becauſe the ſayd Act was againſt common right and reaſon, the common Law (as to that point) adjudged it voyd. Vide plus ibidem.

s due of pon right.

10. Quota pars, viz. decima pars (which we call diſmes or tythes) is an Eccleſiaſticall Inheritance, collaterall to the eſtate of the Land, which cannot be either extinct or ſuſpended by unity of poſſeſſion, becauſe they are due of common right: And therefore if a Prior, having a Parſonage impropriate, had infeoffed a Layman of part of the Glebe, yet he ſhould have had tythes againſt his owne feoffment, as it is held in 42 E. 3. 13. a. Vide Hob. 107. The Biſhop of Carliles caſe. Co. l. 11. 13. a. 3. in *Bridle* and *Nappers* caſe.

inry in a

11. The Lord of a Leet cannot ſufficie to diſtraine for the certainty of the Leet, becauſe it is collaterall and againſt common right, and for the private profit of the Lord of the Leet, which the Lord cannot have without preſcription, and therefore as he ought to preſcribe in the principall, ſo ought he to preſcribe in the diſtreſſe: Howbeit although for an amerciament in a Court Baron the Lord cannot diſtraine without preſcription (Vide 44 E. 3. 13.) yet for a Fine and all amerciaments in a Court Leet, diſtreſſe is incident of common right: And therefore if the certainty be not duely payd, the Deciſer or Capitall pledge, that collects it, may firſt be amerced, and then diſtrained for his negligence. Co. l. 11. 44. a. & 45. a. in *Rich. Godfreys* caſe.

ut at wil.

12. If Leſſor upon a leaſe at will reſerve an annuall rent, he may diſtraine for the rent arreare, or have an action of debt for it at his election; becauſe power of diſtreſſe is (in that caſe) given him of common right, and ſo is alſo the action. Litt. S. 72. Co. Inſt. pars 1. 57. b.

y de par-

13. Where Coparceners make partition by Deed, and for equality of partition one of them is to have a rent out of the land; in this caſe ſhee may diſtraine for the rent arreare of common right. Litt. S. 252. Co. ibid. 169. b.

e,

14. In an Aſſiſe of Novel diſſeiſin for Land, or (ſince the Statute of 32 H. 8. 7.) for Tithes, the tertenant need not be named in the Count, but onely the diſſeiſor: It is otherwiſe in an Aſſiſe of Rent-charge or ſeck, becauſe they are things againſt common right. Dyer, 84. a. 81 7. *E.* 6.

145. And therefore it ſuffereth things againſt principles of Law, rather then the party ſhould be without remedy.

eciall caſe entail.

1. John de Mandevile by his Wife Roberge had iſſue Robert and Mawde, Michael de Morvile gave certaine Lands to Roberge, and to the heires of John Mandevile her late Husband on her body begotten, and it was adjudged that Roberge has an eſtate but for life, and the fee-taile veſted in Robert (heires of the body of his Father being a good name of purchaſe), and that when he dyes without iſſue, Mawde the Daughter was tenant in taile as heire of the body of her Father, per formam doni, and the Formedon, which ſhee brought ſuppoſed, Quod poſt mortem prefatæ Robergiæ, & Roberti filii & heredis ipſius Johannis Mandeviſe, & heredis ipſius Johannis de prefata Robergia per prefatum Johannem procreat, prefatæ Matildæ filiæ predict Johannis de prefato de Co. Inſt. pars 1. 26. b. 2.

Robergia

Robergia per præfatum Johannem procreatæ ſorori & hæredi prædicti Roberti deſcendere debet performam donationis prædictæ. And yet in truth the land did not deſcend unto her from Robert, but becauſe ſhee could have no other Writ, it was adjudged to be good: In which caſe it is to be obſerved, that albeit Robert being heire, tooke an eſtate by purchaſe, and the Daughter was no heire of his body at the time of the gift, yet ſhee recovered the land per formam doni, by the name of Heire of the body of her Father, which (indeed) her brother was, and was alſo capable at the time of the gift, whereas when the gift was made, ſhee tooke nothing but in expectancy, when ſhee ſhould become heire per formam doni: And yet the law permits her to have a Writ in forme aforeſaid, leaſt otherwiſe ſhe ſhould have been without remedy.

Co. ibid. 47. b. 3. 2. The Lord ſhall not have an action of debt for reliefe or for eſcuage due unto him, becauſe he hath other remedy to recover the ſame, viz. by diſtreſſe: Howbeit his Executors or Adminiſtrators ſhall have an action of debt for them, becauſe they are now become as ſhowers ſalne from the ſtock, and they have no other remedy. Remedy for reliefe, &c.

Litt. S. 67. Co. ibid. 52. b. 4. 3. If tenements are let to a man for the terme of halfe a yeare or a quarter of a yeare, &c. in this caſe, if the leſſee make waſte, the leſſor ſhall have againſt him a Writ of waſte, and the Writ ſhall ſay, Quod tenet ad terminum annorum, but he ſhall have a ſpeciall Declaration upon the truth of the matter, and the Count ſhall not abate the Writ; and the reaſon is, becauſe he can have no other Writ, whereby the wrong done him may be remedied: And therefore albeit the Statute Co. ibid. 54. b. 4. of Gloceſter ca. 5. which giveth the action of waſte againſt the leſſee for life or yeares (which lay not againſt them at the common Law) ſpeaketh of one that holdeth for terme of years, in the Plurall number, nevertheleſſe (although it be a penall Law, whereby treble damages and the place waſted ſhall be recovered) yet a tenant for halfe a yeare being within the ſame miſchiefe, ſhall be within the ſame remedy, though it be without the letter of the Law, cauſa qua ſupra. For waſte.

Co. Inſt. part 1. 56. a. 1. 4. If Leſſee for yeares be diſturbed of his way, for remedy thereof he ſhall have his ſpeciall action upon the caſe, but if it be a common way (to avoyd multiplicity of ſuits) it ought to be preſented and reformed in the Leet or Turne, and no particular perſon ſhall bring any action for it, unleſſe he ſuffer particular damage by the nuſance (as if he and his Horſe fall into a ditch ſo made in the common way, or the like) which happeneth not to others: Howbeit in the Kings Bench in a caſe betwixt Weſtbury and Powell it was adjudged, that where the Inhabitants of Southwarke had by cuſtome a watering place for their Cattell, which was ſtopped up by Powell, in that caſe any Inhabitant there might have an action, becauſe otherwiſe they ſhould be without remedy, for that ſuch a nuſance is not preſentable in the Leet or Turne. An action for a publick nuſance.

Co. ibid. 111. a. 4. 5. In Cities and Burrows, where Tenements were deviſable, if the heire of the deviſor had entred, and had held out the deviſee, albeit the deviſee might have entred (as Lit. ſaith, S. 167.) Yet, beſides, the Law ordained a Writ for him called Ex gravi querela, and this Writ without any particular uſage was incident to the cuſtome to deviſe; becauſe otherwiſe, if a diſcent had been caſt before the deviſee had entred, the deviſee had been without remedy, there being no other way provided for him to recover his land. Ex gravi querela for Deviſees of Lands.

Litt. S. 179. Co. ibid. 119. a. 3. 6. If a Villain purchaſe a Signiory, rent, or other profit out of land, or a reverſion after an eſtate for yeares, life, in tatle, by Statute Merchant, Statute Staple, or Elegit, and attornement is made unto him according to the grant; in ſuch caſes, the Lord may come upon the land and claime the reverſion, and in ſo doing ſhall not be adjudged a treſpaſſer, for he hath no other means to come by the reverſion, becauſe if he ſhould Claime of Reverſion, &c. by the Lord of a Villain.

should stay untill the reversion should fall, the Villain might alien it to another before his entry, and so prevent him of his just title thereunto: Also upon grant of an Advowson to a Villain, claime must be made immediately at the Church, though it be then full of an Incumbent, for if he stay till an avoydance, he may be prevented, as aforesaid, Vide infr. 35. Lit. S. 180.

Outlawry no plea in Error to reverse it.

7. Regularly an outlawed person cannot sue, and if hee do, it is a good plea in disability of his person, to say, that he is outlawed: yet in a Writ of Error to reverse an Outlawry, Outlawry in that suit, or at any strangers suit shall not disable the Plaintiff, because if he in that action should be disabled, and were outlawed at severall mens suits, he should never reverse any of them. Co. lib. 128. a. 4.

Aliens may have actions personall.

8. Albeit Aliens (though in amity) are exclu'd from many priviledges that Subjects borne enjoy, yet such a Alien may maintaine personall actions, for an Alien may trade and trafficke, buy and sell, and therefore of necessity he must be of ability to have personall actions, and an Alien that is condemned in an Information shall have a Writ of Error to relieve himselfe, Et sic de similibus, for otherwise they should be without remedy. Co. lib. 129. b. 1.

Monk cannot sue, &c.

9. If a Monk or other spiritual person profest, were beaten, wounded, or imprisoned, he is prohibited to sue (as Lit. saith, S. 200.) because he is a dead person in Law: but here the Law gives a remedy, for in that case the Abbot and Monke shall joyne in an Action against the wrong doer, and if the Writ be Ad damnum ipsius Priores, the Writ is good, or if it be Ad damnum ipsorum, it is good also: yet in this case the Abbot or Prior (in his person) was not wronged. Also if a Monk were by Conspiracy falsely and maliciously indicted of Felony and Robbery, and afterwards was lawfully acquitted, his Soveraign and he should have joyned in a Writ of Conspiracy, and the like: There is the same Law also of a Nunne, Sanctimonialis, mutatis mutandis: And if the Law did not provide such a course, they might have been injured and left without remedy. Co. lib. 132. b. 3.

Feme Covert may sue and be sued.

10. A Feme Covert is disabled to sue without her Husband, and yet we read that (in some cases) a Wife hath had ability to sue and to be sued without her Husband: for the Wife of Sir Rob. Belknap (one of the Justices of the Court of Common Pleas) who was banished beyond Sea, did sue a Writ in her own name, without her Husband, he being alive, whereof one said: Co. lib. 132. b. 4. 2 H. 4. f. 7. a.

Ecce modo mirum, quod fœmine fert breve Regis
Non nominando virum conjunctim robore Legis.

Also E. 3. brought a Quare Impedit against the Lady Maltravers, and she pleaded, that she was Covert of Baron, whereunto it was replied for the King, that her husband, the Lord Maltravers was put in exile for a certain cause, & she was ruled to answer. Vide meze examples hereof in Coke, ubi supra, where this difference is put, that if the Husband be condemned to perpetuall banishment, his wife in his absence, and in her own name, shall sue and be sued; but if it be but Relegation for a time, it seems to be otherwise: And all this, least the parties that have cause of Action, should remain without remedy; for when he is condemned to perpetuall banishment, he is as a Monk profest, dead in Law: There is the same Law also of perpetuall abiuration. Co. lib. 10 E. 3. 53.

person may be charged with an annuity, though discharged by words.

11. If a man grant a Rent-charge out of his Land, with Proviso that the Grantee shall not charge his person: in such case (regularly) the Land shall be onely charged, and his person free: And yet in some case where there is such a Proviso in the Grant, that the person of the Grantee shall Co. lib. 146. b. 1. Co. L. 739. b. 1. in *Lillingstons* case.

ſhall not be charged, nevertheleſſe the perſon of the Grantor ſhall be charged: As if a man grant a rent charge out of certaine Lands to another for life, with ſuch a Proviſo, the rent is behind, the grantee dyeth, in this caſe the Executors of the Grantee ſhall have an action of debt againſt the Grantor, and charge his perſon for the arrearages due in the life of the Grantee, becauſe the Executors have no other remedy againſt the Grantor for the arrearages. Vide infr. 32.

Litt. 252. Co. 169. b. 4. 12. Where in Dower or upon Partition betwixt parcenors, a rent is granted to ſupply the thirds, or for egalty of partition; in ſuch caſe, the Law doth give a Diſtreſſe, leſt the Grantee ſhould be without remedy, having in lieu thereof departed with a valuable recompence in Land. Egalty of partition.

Co. ibid. 197. a. 4. 13. For twenty ſhillings rent, or a pound of Pepper payable yearly, two tenants in common ought to have ſeverall Aſſiſes, becauſe they have them by ſeverable titles; as one tenant in common may have an Aſſiſe of the moity of twenty ſhillings, or of the moity of a pound of Pepper (de medietate unius libræ piperis, but not of ten ſhillings, or de dimidio libræ piperis.) And for that theſe things are in themſelves ſeverable: Howbeit, for an Hawk, Horſe, or the like, which are intire, albeit they be tenants in common, yet ſhall they joyne in an Aſſiſe, becauſe, otherwiſe, they ſhould be without remedy; for, one of them cannot make his plaint in Aſſiſe of the moity of a Hawk, Horſe, &c. that were againſt the order of nature, which the Law will not ſuffer: and if they ſhould not joyne, they ſhould have Damnum & injuriam, and yet ſhould have no remedy by Law, which would be inconvenient: for the Law will, that in every caſe, where a man is wronged and endamaged, that he ſhall have remedy, Aliquid conceditur, ne injuria remaneret impunita, quod alias non concederetur: ſo alſo ſhall they joyne in a Quare impedit, in a Writ of right ward, or raviſhment of ward for the body, for the ſame reaſon. Tenants in common ſhall joyne in Aſſize.

Co. ibid. 198. a. 3. Co. l. 10. 134. b. 3. in *Read* and *Redmans* caſe. 14. If there be two Tenants in common of an Advowſon, and a ſtranger uſurps, ſo as the right is turned to an action, and they bring a Writ of Quare impedit, which concernes the realty, the ſix moneths paſſe, and the one dyeth: In this caſe the Writ ſhall not abate, but the ſurvivor ſhall recover, for otherwiſe there would be no remedy to redreſſe this wrong, and ſo it is alſo of Coparceners. The ſurvivor ſhall recover.

Litt. S. 365. Co. ibid. 226. a. 3. 15. It is regularly true, that a man ſhall not plead or take advantage of a Condition, without ſhewing forth the proofe thereof in writing: And yet, if land be mortgaged upon condition, and the Mortgagee letteth the Lands for years, reſerving a rent, the condition is performed, the mortgagor re-enters: In an action of debt brought for the rent, the Leſſee ſhall plead the condition and the re-entry, without ſhewing forth any Deed: ſo in an Aſſiſe the tenant pleads a Feoffment of the Anceſtor unto him, &c. the Plaintiff ſaith, The Feoffment was upon condition, and that the condition was broken, and pleads a re-entry, and that the tenant entred and tooke away the Cheſt, in which the Deed was, and yet detaineth the ſame, the Plaintiff ſhall not in this caſe be inforced to ſhew the Deed: Alſo if a woman gives Lands to a man and his heires by Deed or without generally, ſhee may in pleading aver the ſame to be Cauſa matrimonij prelocati, albeit ſhee hath nothing in writing to prove the ſame: And the reaſon of theſe caſes and the like is, leſt the parties that ſhould prove the conditions ſhould (upon failer thereof) be utterly left without remedy. A Condition need not be ſhewed forth.

Litt. S. 391. Co. ibid. 240. a. 3. 16. If the Feoffee of Land in fee upon condition dye ſeiſed, this diſcent (if the condition be broken) ſhall not take away the entry of the Feoffor or his heires: but if the Feoffee upon condition be diſſeiſed, and the diſſeiſor dye, whereby a deſcent is caſt, this ſhall take away the entry Right and title a diver

entry of the Feoffee; because he hath a right to the land, and therefore his entry may be taken away, for that he may recover his right by action: But the Feoffor, that hath but a Condition, his title of entry cannot be taken away by any descent, because he hath no remedy by action to recover the land, and therefore if a descent should take away his entry, it should barr him for ever: And the Law (in this case) is all one, whether the descent were before the condition broken or after: Also he that hath a title to enter upon a Mortmaine shall not be barred by a descent, because then he should be without all remedy: So it is also where a Woman hath a title to enter, Causa matrimonii prelocuti, no descent shall take away her entry, because shee hath but a title, and no remedy by action. If a man be seised of lands in Fee, and in writing deviseth the same to another in Fee, and dyeth, and the Heire before any entry made by the Devisee, entreth and dyeth seised, this descent shall not take away the entry of the Devisee; for if the descent (which is an act in Law) should take away his entry, the Law should barre him of his right, and leave him utterly without remedy: So it is also of him that entreth for consent to a ravishment, and was so resolved in the case of Martin Trotte, 32 Eliz. in Communi Banco, and accordingly was the Opinion of the Court of Common Pleas, Pasch. 1. Jac. To this may be added as a like Case, The Kings Patentee before he enter, &c. by all which you may observe a diversity betwixt a right, for which the Law giveth a remedy by action, and a Title, for the which the Law giveth no remedy, but by entry onely.

tinuall me. 17. Regularly, Continuall claime cannot be lawfully made, but where hee that makes the claime hath present right or title to enter, and yet in some cases (where a man is left without other remedy) a Continuall claime may be made by him, that hath right and cannot enter: As if Tenant for yeares, Statute Merchant, Staple, or Elegit, be outed, and he in the reversion disseised, the Lessor or he in reversion may enter to the intent to make his claime, and yet his entry, as to take any profits, is not lawfull during the terme: So likewise the Lessor or Reversioner may in such case enter to avoyde a collaterall Warranty, or the Lessor in that case may recover in an Assise: And so (as some have holden) may a Lessor enter in case of a Lease for life, to the intent to avoyde a Descent or Warranty. If the Disseisee make Continuall claime, and the Disseisor dye seised within the yeare, his Heire within age, and by Office the King is intitled to Wardship; in this case, albeit the entry of the Disseisee be not lawfull, yet may he make Continuall claime to avoyde a Descent.

Co. ibid. 250. b. 1. Litt. S. 414.

xtinuall me. 18. When a man for feare of death, or some corporall hurt dare not make an actuall entry into land, hee may approach as neer thereunto, as he dare for such feare, and claime the Land, and this claime, which is an entry in Law, doth vest the possession and seisin in him (for his advantage, but not for any thing which may tend to his disadvantage) as if he had made an actuall entry into the Land; because otherwise he should be left without remedy.

Co. Inst. pars 1. 253. b. 4. Litt. S. 419.

lawry n beyond reversable. 19. If a Recovery be had against a man in a Precipe by default, when he was extra quatuor maria, it shall not be reversed by a Writ of Error for that cause, for that he is not left without remedy, but may have his action of an higher nature, or a Quod ei deforceat: Howbeit, if a man be outlawed in a personall action, being then extra quatuor maria, he may reverse it by a Writ of Error, for otherwise he should be without remedy, and (besides) de Minimis non curat Lex.

Co. ibid. 260. b. 3.

20. Where a man cannot have advantage of the speciall matter by

Co. ibid. 283. a. 3. way of pleading, he ſhall be permitted to take advantage thereof in the Evidence: for otherwiſe he ſhould be left without remedy: For example, the Rule of Law is, that a man cannot juſtifie in the killing or death of a man, and therefore in that caſe he ſhall be received to give the ſpeciall matter in Evidence, as that it was Se defendendo, or in defence of his Houſe in the night againſt Theeves or Robbers, or the like. What not pleaded given in evidence.

Co. ibid. 312. b. 1. 21. If a Seigniory be granted to one for life, the remainder to another in fee, the attornement of the Tenant to the Tenant for life is an attornement to the remainder alſo: Howbeit, if acquittall ought to be made or other priviledge had: in ſuch caſe, albeit attornement be made to the Tenant for life, and he acknowledge the acquittall, &c. Yet after his deceaſe hee in remainder ſhall not diſtraine, untill hee acknowledge the Acquittall alſo, notwithſtanding the Attornement of the Tenant for life, for otherwiſe the Tenant ſhould be without remedy. Attornment. Acquittall.

Co. ibid. 347. a. 1. 22. By the policy of the Law, The Abbot (termed the ſoveraigne) albeit (indeed) he be but a Monke or ſecular perſon dead in Law, yet hath he capacity and ability to ſue and be ſued, to enfeoffe, give, demiſe, and Leaſe to others, and to purchaſe and take from others; for otherwiſe they who right have, ſhould not have their lawfull remedy, nor the Houſe remedy againſt any other, that did them wrong. Abbot capable to ſue and be ſued.

Co. ibid. 354. a. 3. 23. Regularly, a man cannot be remitted againſt his owne alienation, yet if there be Baron and Feme in ſpeciall tayle, and the Baron alien the Land to another in fee, and take an eſtate backe to him and his Wife for their lives: in this caſe, the Baron is remitted againſt his owne alienation, as well as the Feme: for the Feme cannot be remitted without the Baron be remitted alſo, and rather then the Feme ſhould not by Remitter have remedy and her ancient right reſtored to her, the Baron ſhall be alſo remitted againſt his owne Grant: And therefore (in that caſe) if there were any remainders in taile upon the ſpeciall taile, and laſt of all a reverſion or remainder in fee above them, upon taking backe of the eſtate for lives by the Baron, all theſe in remainder or reverſion are alſo remitted. Baron remitted againſt his own alienation. Litt. S. 673.

Co. ibid. 376. a. 3. &c. 24. By the Rule of Law, a Warranty made by the Father deſcends upon his heire at the common Law, and he onely is to be vouched to maintaine the ſame; yet in ſome caſes leſt the Voucher ſhould be without remedy, they that are not Heire at Law may be vouched: As if a man enfeoffeth another of an acre of land with warranty, and hath iſſue two Sons, and dyeth ſeiſed of another acre of land of the nature of Burrow English, the Feoffee is impleaded; here, albeit the Warranty deſcendeth onely upon the eldeſt Son, yet may he vouch them both, the one as heire to the Warranty, and the other as heire to the land: For if he ſhould vouch the eldeſt Son onely, then ſhould hee not have the fruit of his Warranty, Viz. a recovery in value, and the youngeſt Son onely he cannot vouch, becauſe he is not heire at the common Law, upon whom the Warranty deſcendeth: So it is alſo of heires in Gavelkind, the eldeſt may be vouched as heire to the Warranty, and the other Sons in reſpect of the Inheritance deſcended unto them: In like ſort the heire at the common law, and the heire of the part of the Mother ſhall be vouched: Howbeit the heire at Law may be vouched alone in both theſe caſes, at the election of the Tenant, & ſic de ſimilibus: In the ſame manner if a man dye ſeiſed of certaine lands in fee, having One that is not heire at Law, may be vouched to warranty.

iſſue

iſſue a Son and a Daughter by one venter, and a Son by another, the eldeſt Son entreth and dyeth, and the land deſcends to the Sister; in this caſe, the Warranty deſcendeth on the Son, and he may be vouched as heire, and the Sister, as heire of the land: In which and the other caſe of Burrow English, the Sonne and heire at Law, having nothing by deſcent, the whole loſſe of the Recovery lyeth upon the heires of the Land, albeit they be no heires to the Warranty.

Warrants. 25. If a man doe warrant Land to another without this word (Heires) his heires ſhall not vouch; and, regularly, if hee warrant Land to a man and his heires, without naming Aſſignes, his aſſignee ſhall not vouch: Howbeit, if the Father be enfeoffed with Warranty to him and his heires, and the Father enfeoffeth his eldeſt Sonne with warranty and dyeth: In this caſe, albeit the Warranty between the Father and the Son is by act in Law extinct, yet the Law giveth to the Son advantage of the Warranty made to the Father, becauſe (otherwiſe) he ſhould be without remedy, occaſioned by an act of Law, which can do no wrong. Co. Inſt. pars 1. 384. b. 4.

Warranty. 26. It is againſt a Rule in Law, that a man ſhould vouch himſelfe (Vide R. 54. Ex. 14.) And yet if a man be enfeoffed with warranty to him and his heires of greene acre, and is alſo ſeiſed in fee of black acre in Burrow English, and having two Sonnes, enfeoffeth his eldeſt Sonne of greene acre; in this caſe, if the eldeſt Sonne be impleaded, hee ſhall vouch himſelfe, and his younger Brother (being heire in Burrow English) for otherwiſe the eldeſt Sonne ſhould be without remedy; becauſe the act in Law, (Viz. The deſcent) hath determined the Warranty betweene the Father and the eldeſt Sonne. Co. ibid. 390. a. 1.

Warranty by fe and huſband, &c. 27. Baron and Feme being one perſon in Law, it is againſt the Rule of Law, that they ſhould vouch one another, neither ſhall a Warranty be made uſe of, whilſt it is in ſuſpence: And yet if a man enfeoffeth a woman with Warranty, and they intermarry, and are impleaded, and upon default of the Husband the Feme is received; in this caſe, the Feme ſhall vouch her Husband, &c. notwithſtanding the Warranty was put in ſuſpence by the intermarriage: So likewiſe on the other ſide, if a woman enfeoff a man with Warranty, and they intermarry, and are impleaded; in this caſe, the Husband ſhall vouch himſelfe and his Wife by force of the ſaid Warranty: Albeit it be againſt another Rule of Law (Viz. 54. before cited) that a man ſhould doe an act to himſelfe: And all this leaſt the Husband or Wife, in their ſeverall caſes, ſhould be without remedy. Co. ibid. 290. a. 3. 1. & 103. b. 9. Dyer 2. p & Mar. & 315. b. 1. 15. Eliz.

arranty. parcener. 28. Regularly, the Feoffee of one Coparcener ſhall not have ayde of the other Coparcener to veraigne a Warranty paramount: And yet if there be two Coparceners, and they make partition, and the one of them enfeoffs her Sonne and heire apparent and dyeth, and the Son is impleaded: In this caſe, albeit he be in by the Feoffment of his Mother, yet ſhall he pray in aide of the other Coparcener to have the Warranty: And the reaſon of the granting of this ayde is for that the warranty between the Mother and the Sonne is by Law annulled, and therefore leaſt the Sonne ſhould be prejudiced by Law (which can do no wrong) and ſo be left without remedy, the Law giveth him (albeit he is in by Feoffment) to pray in ayde of the other coparcener to veraigne the warranty paramount. Co. ibid. 174. a. 4.

Co. l. 3. 12. a. 3. in Sir *wil. Harberts* caſe.

29. In Debt againſt the heire upon an obligation made by the Anceſtor, the creditor could not (at the common Law) have had execution againſt any part of the Land, whereof the debtor was ſeiſed, in the life of the debtor himſelfe; but after his deceaſe he might have had all the land deſcended upon the heire in execution, untill he ſhould be ſatisfied the debt, becauſe the common law giving action of debt againſt the heire, if the debtor ſhould not have had execution of the Lands againſt the heire, he ſhould not have had any fruit of his action, and ſo ſhould have been left without remedy: for the goods and chattells of the debtor did belong to his Executors or Adminiſtrators, ſo as if land ſhould not have been lyable to a debt of a common perſon at the common Law, the creditor had been without remedy: and yet the common phraſe is, Lands pay no debts. Debt againſt the Heire.

Co. l. 4. 30. b. 3. in *Shaw* and *Thompſons* caſe.

30. In a Court Baron the damages to be recovered ought not to exceed forty ſhillings, yet in a Copyhold Mannor where the cuſtome is that a Feme ſhall be endowed, if ſhee recover Dower with damages in the Lords Court, albeit thoſe damages exceed forty ſhillings, yet are they recoverable in the ſame Court, for otherwiſe ſhee ſhould be without remedy, becauſe they are not recoverable by the common Law, but onely in the Court of the Lord by Levari facias. Dower. Copy-hold.

Co. l. 5. 88. a. 3. in *Garnors* caſe.

31. At the common Law, if a man had judgement in an action of debt, and after judgement outlawed the Defendant: in this caſe the Plaintiff was not at the end of his ſuit, as to any proceſſe to be further ſued by himſelfe, for he could not have a Scire facias, nor any other proceſſe upon the Judgement, but was put to his new Originall, as it is agreed in 13 H. 4. 1. a. 21 E. 3. 55. and 20 E. 3. Nonability 8. And albeit before the Statute of 25 E. 3. ca. . Capias did not lye in debt, nor the body of the Defendant before that Statute was ſubject to execution for debt; yet in theſe caſes if the Defendant be taken by Capias ut lagatum at the Kings ſuit (no Laches being in the Plaintiff in continuance of his proceſſe) he ſhall be in execution for the Plaintiff, if he will: for albeit the property of all the Defendants goods and profits of his Lands are by the Outlawry veſted in the King, yet rather then the Plaintiff ſhould be without remedy, he ſhall hold him in execution for his debt, and for that reaſon he ſhall (in ſuch caſe) participate of the benefit as well as the King. No *capias* in debt at the C. Law.

Co. l. 6. 41. b. 2. in Sir *Anthony Mildmays* caſe. & Co. l. 7. 39. b. in *Lillingſtons* caſe.

32. If a man by Deed grant a rent to another for his life, provided that he ſhall not charge his perſon; in this caſe, if the rent be arreare, and the grantee dye, his Executors ſhall charge the perſon of the grantor in an action of debt, for otherwiſe they ſhould be without remedy. Vide ſupra 11. Rent ſued for by Executors.

Co. l. 8. 59. b. 2. in *Bredimans* caſe.

33. Regularly, a Precipe lyeth not againſt a Termor, becauſe he cannot tender ſeiſin: Howbeit, againſt a Guardian in Chivalry, who is upon the matter but a Termor, being but poſſeſt of a Chattell (viz. the Wardſhip) a Writ of Dower lyeth, becauſe otherwiſe the tenant in Dower ſhould be without remedy, for (in ſuch caſe) no Writ of Dower lyeth againſt the Heire, as it is adjudged in 9 H. 6. 6. Trevils Caſe. Writ of Dower againſt Guardian.

Co. l. 6. 65. b. 1. in Sir *Moyle Finches* caſe.

34. If William Abbot of Worceſter purchaſe a Writ by the name of Thomas Abbot of Worceſter, the Writ ſhall abate, becauſe he may purchaſe a new one: Howbeit, if he with the conſent of the Covent, grant to the Burgeſſes of Worceſter common of paſture out of certaine lands by the name of Thomas Abbot of Worceſter, when his name is William, the grant is good, becauſe there is certainty enough to make certain the name of the Grantor, viz. Abbot of W. (Nihil facit error nominis cum conſtat de perſona.) And, otherwiſe, the Grantees ſhould be without remedy, for they cannot have a new Grant. Miſnomer.

35. If

powry and
ast without
ornment,
A

35. If a man be ſeiſed of a Manor, part whereof in Leaſe for life, and part in Leaſe for yeares, and he levies a Fine to A. to the uſe of B. in taile, with divers remainders over: In this caſe B. ſhall avow for the rent, and have an action of Waſte without any attornement: for, when a reverſion is ſetled in any in judgement of Law, and he hath not any poſſible meanes to compell the Tenant to attorne, and no Laches or default is in him, in ſuch caſe he ſhall avow and have an action of Waſte without attornement, for the Rule is, Quod remedio deſtituitur, ipſa re valet ſi culpa abſit. So in 20 E. 3. Contra formam Collat. becauſe the founder cannot have the Writ of Contra formam Collationis of an Advowſon, he ſhall preſent without any ſuit, becauſe otherwiſe he ſhould be without remedy. Likewiſe in 7 E. 3. and 3 H. 7. A man ſhall be Tenant by the Curteſie, of a rent or Advowſon, albeit the woman dye before the day incurr, or the avoydance fall: Alſo the Lord in Portmain or of a Villaine claimes a reverſion, by ſuch claime the Law veſts the reverſion in him, and he ſhall avow and bring an action of Waſte without attornement, becauſe he hath no meanes to compell the Tenant to attorne: There is the ſame law of Letters Patents, and of a demiſe of a reverſion, as appeares in 34 H. 6. for in all theſe caſes, abeſt culpa, and the party ſhould be (otherwiſe) left without remedy, Vide ſupra 6.

Co. l. 6 68, a. 1. in Sir *Moyle Finches* caſe.

Quare Impe-
ſhall not a-
e for the
ath of the
ron.

36. If a Quare impedit be brought againſt the Patron and Incumbent, and the Patron dye, hanging the Writ, the death of the Patron ſhall not abate the Writ, as it is adjudged in 9 H. 6. 31. For here are two miſchiefs, the one if the Writ ſhall abate the diſturbance ſhall be left unpuniſhed, and albeit the Writ be well commenced, yet the Plaintiff ſhall be without remedy, for there will want a diſturber; and the other miſchiefe is, if the Writ do not abate, but the Plaintiffs proceeds to Judgement and Execution, the true Patron ſhall be out of poſſeſſion: And therefore in as much as in the one caſe, if the right Patron be put out of poſſeſſion, he hath remedy by a Writ of right to recontinue the Advowſon, and in the other caſe, if the Writ ſhall abate, the Plaintiff ſhall be without remedy, which (of the two) is the greater miſchiefe, for this cauſe the Writ ſhall ſtand and ſhall not be abated: with which accords 7 H. 4. 20. b. 13 H. 8. 13. 9 H. 6. 57. For the ſame reaſon it is, that a Quare impedit brought by Coparceners or Joyntenants ſhall not abate by the death of one of them, or brought by Baron and Feme ſhall not abate by the death of the Feme: becauſe, otherwiſe, the Plaintiff (if the ſix moneths are paſt) ſhall be without remedy, as the Books are in F. N. B. 35. b 38 E. 3. 43. 37 H. 6. 11. 7 H. 4. 19. 14 H. 4. 12. 9 H. 6. 30. 57. 1 H. 5. 13. 17 E. 3. 11. 7 E. 3. 304.

Co. l. 7. 26. b. 2. in the caſes of *Quare Impedit.* Vide Co. l. 10. 134. b. 4. in *Read* and *Redmans* caſe.

continu-
e of ſuits by
ffice of the
r.

37 At the common Law (regularly) by demiſe of the King all ſuits were diſcontinued, for remedy whereof the Statute of 1 E. 6. 7. was ordained, yet ſince that Statute if an Originall were not returned before the death of the King, it was loſt, for the words of that Statute are, Depending in any Court: Howbeit (at the Common Law before that Statute) in an Appeale of death, if the Writ were delivered to the Sheriff within the yeare, and before the returne thereof, or that the Sheriff doth any thing in it, the King dyes, and the yeare is expired before the day of the returne: In this caſe the common Law gave remedy to the Plaintiff, viz. a Certiorari out of the Chancery returnable in the Kings Bench, and thereupon the Plaintiff had re-attachment, although it came not in by the returne of the Sheriff, but by the Certiorari: And the reaſon is, for the neceſſity of the matter, for (otherwiſe) the Plaintiff, who lawfully purchaſed his Writ within the yeare without any default in him, ſhall loſe his appeale, the yeare being paſt: And therefore in as much as by act in Law the Writ is diſcontinued, the Law gives a

Co. l. 7. 30. a. 4. in caſes of the diſcontinuance of Proceſſe.

means

meane to revive it, to the end the party ſhould not be without remedy: So if a man purchaſe a Formedon againſt the Parnor of the profits within a yeare after the title accrued, if before the returne of the Writ, &c. the King demiſeth his Crowne, the Writ ſhall be removed into the Common Bench by Certiorari, and thereupon he ſhall have a Reſummons for the miſchiefe, &c. for otherwiſe he ſhould be left without remedy, as is holden in 10 E. 4. 13. b. and 14. a.

Co. l. 7. 39. b. 2. in *Lillingſtons* caſe.

38. If a man grant a rent-charge for life out of his land, with Proviſo not to charge his perſon, and the rent is arreare, and the Grantor infeoffe A. and the rent is arreare in his time, and after A. enfeoffs B. and the rent is alſo arreare in his time, and after the Grantee dyes, his Executors ſhall have an action of debt againſt any of them for the rent arreare in his time, becauſe, otherwiſe, the Executors ſhould be without remedy, and Qui ſentit commodum ſentire debet & onus. Vide ſupra 11. and 32. Arreare of rent ſued by Executors.

Co. l. 8. 50. a. 3. in *John Webs* caſe.

39. It ſeemes incongruous and againſt reaſon, that the ter-tenant who is already ſeiſed of the land, ſhould have a Writ of Novel diſſeiſin concerning the ſame Land: And yet in ſome caſes (rather then hee ſhould be left without remedy) he ſhall have it: As if the Lord, &c. diſtraine his tenant ſo often, that he cannot manure his Land, in this caſe the ter-tenant may have an Aſſiſe, and the Writ ſhall be generall, but he ſhall make a ſpeciall Plaint, that the Lord, &c. Sovent fois diſtraines, &c. And the Judgement ſhall not be, Quod querens recuperabit ſeiſinam tenementorum prædictorum, for the Plaintiff himſelfe is ſeiſed of the Land, but the judgement ſhall be, that he ſhall have and hold the Land, abſque multiplici diſtrictione, &c. So likewiſe, in caſu quo quis poſcit alterius ſeparale, The ter-tenant ſhall have an Aſſiſe by the common Law: And the Statute of Weſt. 2. ca. 25. that gives an Aſſiſe of Novel diſſeiſin de libero tenemento in ſuch caſes, is but an affirmance of the common Law: for in like manner he ſhall have an Aſſiſe for fiſhing in his ſeverall Piſcary, or for Turbary, Common, &c. and the Writ ſhall be generall, as appeares by that Statute, but the Plaintiff in his plaint ought to ſhew that the Defendant claiming common of paſture in his ſeverall, with his Cattell diſturbs him, &c. And the Judgement ſhall not be, that he ſhall recover the ſeiſin of the tenements, &c. but that he ſhall have and hold them in ſeveralty, for the Plaintiff himſelf is already in ſeiſin of the frank tenement: In which caſes, and the like, it may be obſerved, that the Judgement doth not purſue the Writ, which (regularly) it ſhould, for then it ſhould adjudge him the Land it ſelfe, which is needleſſe, becauſe he hath it already: Howbeit leaſt he ſhould be without remedy, it gives him the Writ, by which Land is uſually recovered. The Ter-tenant may have an Aſſize for his own Land.

Co. l. 10. 127. b. 3. in *Clun's* caſe.

40. If the Leſſee pay his rent voluntarily before the day, albeit this payment be voluntary, yet is it not ſatisfactory, as to ſatisfie the rent not then due: Howbeit if the rent, or any part thereof be given before the day of payment in name of ſeiſin of the rent, this payment ſhall give ſufficient Seiſin to have an Aſſiſe or other remedy for the rent, becauſe the Law delighteth in giving remedies. Part of the rent ſeiſia.

F. N. B. 3. c.

41. If there be Lord and Tenant of a Seignory in groſſe, for which the Lord (for want of ſuitors) can keep no Court; in this caſe, the Tenant may ſue in the Kings Court without licence of the Lord, becauſe, otherwiſe, he ſhould be without remedy, and the Lord ſhall not have an action againſt the Tenant for ſo doing, nor any meanes to annull the Tenants action; and in the end of the Writ theſe words ſhall be inſerted, Quia Dominus remiſit curiam ſuam. Tenant may bring an action without licence.

F. N. B. 8. a. b.

42. If the Baron give parcell of his Manor in taile, to hold of him, and dye, the Feme ſhall ſue her Writ of right of Dower in the Court of Tenant in Dower may ſue in Ca. without licence.

of the Heire of the Baron againſt the Donee in tail, and the Writ ſhall be directed to the heire; but if the Baron make a gift in tail of all the Land which he hath, and dyeth, and the Feme is to ſue a Writ of Right of Dower of that Land, here the heire of the Baron cannot have any Court, becauſe he hath but a Seignorie in groſſe; and therefore (in ſuch caſe) ſhe ſhall have a Writ of Right of Dower againſt the tenant in tail, directed to the Sheriff, and returnable in the Common Bench, and this clauſe ſhall be in the Writ, Quia B. Capitalis Dominus feodi illius nobis inde remiſit curiam ſuam. So likewiſe if the Baron makes a Leaſe of all his Land for terme of life to a ſtranger, and dye, and the Feme is to bring a Writ of right of Dower; in ſuch caſe alſo, the Feme ſhall have a Writ of right of Dower againſt the Leſſee for terme of life in the Common Bench, becauſe the Reverſioner hath not any Court: And albeit this clauſe, viz. Quia B. Capitalis Dominus, *&c.* be put in the Writ; yet becauſe the Lord hath one by a ſeignorie in groſſe, and hath not any demeſne land to hold a Court, and albeit the Lord never remitted his Court, nor that there is any matter apparant, or demurrer in Chancery to prove the aſſent and will of the Lord to remit his Court, yet the Writ returnable in the common Bench before the Juſtices there, is good, and they ſhall proceed thereupon, if the Lord hath not any Court to hold plea upon that matter: And it ſeemes, that the Lord ſhall not have an Action againſt the Demandant for the ſuit of that writ in the Co. Ba. if he hath not a court to hold plea thereupon, and to do right to the party, for if the party might not have liberty to ſue in the Co. Ba. in that caſe, ſhe ſhould be left without remedy: Howbeit (indeed) if the Lord had a court to hold plea, then he might ſue a Writ of Prohibition to the Juſtices of the Co. Ba. that they ſhould not proceed upon that Plea: but otherwiſe not.

Quare Impedit granted in improper caſes.

43. If one man hath the nomination to an Advowſon, and another the preſentation, if he name his Clerk, and the other that ſhould preſent, preſent another clerk, he that hath the nomination ſhall have a Quare Impedit, and the Writ ſhall be Quod permittat ipſum præſentare; albeit, he had but the nomination, for (otherwiſe) he ſhould be without remedy: upon the ſame reaſon it is, that upon diſturbance to one to preſent to a priory or chantery donative to the King or a Biſhop, or the like, a Quare Impedit lyeth, and the Writ ſhall be, Quod permittat ipſum præſentare: and yet thoſe words are not proper in ſuch caſes, but becauſe there is no other Writ, hereby the party may have right done him, rather than he ſhould be without remedy, the Law permits that Writ to be uſed. F. N. B. 33. b. c. d. e. f.

&c. like.

44. Regularly, a man ſhall not have a Quare Impedit, if he cannot alleadge a preſentment in himſelfe, or in his Anceſtor, or in ſome other perſon, by whom he claimes the Advowſon: yet if a man by the Kings licence make a Parish Church, or other Chantery, which ſhall be preſentable, *&c.* if hebe diſturbed to preſent thereunto, he ſhal have a Quare Impedit, without alleadging any preſentment in any perſon, & ſhall count upon the ſpeciall matter: ſo likewiſe if one recover an Advowſon by Writ of right againſt another, when the Church is void, he ſhall preſent, and if he be diſturbed, he ſhall have a Quare Impedit, & alleadge preſentment in him, againſt whom he recovered it, without alleadging any other preſentment: And a man ſhall have a Quare Impedit, and alleadg a preſentment by his procurator, and it ſhall be good without alleadging any preſentment by himſelfe, *&c.* for (otherwiſe) in theſe caſes and the like he ſhould be without remedy: So if an Abbot had been Parſon imparſonee time out of mind, *&c.* And after the Abbey were diſſolved, *&c.* In this caſe he of whom the Advowſon was holden, ſhall preſent, and if he were diſturbed, he might have had a Quare Impedit without alleadging any preſentment in the Count, but therein ſhall ſhew the ſpeciall matter F. N. B. 33. h. i.

45. One

F.N.B.69.h. 45. One would think it a vaine act for a man to procure a Replivin, when his cattell are already come home of their own accord, or when he hath them againe ſafe in his own poſſeſſion: yet if the Lord take the cattell of his Tenant tortiouſly, and after the cattell come home againe to the Tenant: in this caſe, albeit the Tenant is already poſſeſt of them, yet ſhall he have a Replivin againſt the Lord for his cattell taken, and ſhall recover his damages for the tortious taking of them: becauſe (otherwiſe) he ſhould be without remedy, for he cannot have an action of Treſpaſſe againſt his Lord for ſuch unjuſt taking of his cattell. *A Replivin of cattell not detained.*

F.N.B.74.f. 46. In a Replivin it were ſomewhat prepoſterous, that the Defendant ſhould have Withernam againſt the Plaintiff, yet if the Defendant hath returne awarded him, and he ſues the Writ de Returno habendo, and the Sheriff returne upon the Pluries, Quod averria elongata ſunt, &c. In this caſe, the Defendant ſhall have a Scire facias againſt the pledges, &c. according to the Statute of Weſt. 2. And if they have nothing, &c. then ſhall he have Withernam againſt the Plaintiff for the beaſts of the Plaintiff: becauſe (otherwiſe) he ſhould be without remedy. *Withernam granted to the Defendant.*

F.N.B.97.c. 47. A man cannot be properly ſaid to recover Land from another, who never entred into the Land, nor ever had the actuall poſſeſſion thereof: And yet in a Precipe quod reddat, if the Sheriff returne the Tenant ſummoned, where he was not ſummoned, whereby the Tenant upon the grand Cape returned loſeth the Land by default, in this caſe the Tenant ſhall have a Writ of Deceit both againſt him that recovered, and alſo againſt the Sheriff for his falſe returne, and by ſuch Writ of Deceit the Tenant ſhall be reſtored to his Land againe: And this Writ may be ſo brought by the Tenant after Judgement, and before any Entry in poſſeſſion made by the Demandant: For if the Tenant ſhould not have this Writ before the Demandant enter, it may be the Demandant will not enter untill the Summoners in the Precipe quod reddat, and the Summoners, Meyors, and Pernors in the grand Cape are all dead: And ſo ſhould the Tenant be left without remedy to recover the Land: for, after the deceaſe of all the Summoners, Meyors, and Pernors, he cannot have ſuch a Writ, becauſe, whether he were ſummoned or no, is to be tryed by their examination, &c. *A Writ of Deceit.*

F.N.B.114.b. *Vide Sup.* 31. 48. Next to life, the perſon and eſtate of a man are much favoured in Law (Vide Max. 92.) ſo as at the common Law a Capias lay not but in caſe of Treſpaſſe, vi & armis, Felony, &c. yet if an Engliſh Merchant hath his goods taken away from him beyond Sea by a Merchant ſtranger, and there he proſecutes the Law to have Juſtice done him and reſtitution, and cannot have it, and this matter is teſtified to the King in his Chancery by credible witneſſes: upon ſuch bare teſtimony (parte in audita altera) if ſuch Merchant ſtranger come afterwards into England with goods, both body and goods ſhall be arreſted and detained, untill the party grieved be ſatisfied all his damages, by Writ out of the Chancery, to be directed to the Officers or Merchants ſtrangers of the place where he is, or hath goods: for (otherwiſe) the Engliſh Merchant ſhould be without remedy: And ſuch Writs may iſſue to the ſeverall Ports, where the Merchant ſtranger hath any goods, to each of them one, &c. *Merchant ſtranger.*

F.N.B.120.d. 49. At this day the Ordinary ſhall not have an Action of Debt againſt the Creditor of the inteſtate, becauſe that Action is now given to the Adminiſtrator by the Statute of 31 E. 3. 11. and the Ordinary may commit the Adminiſtration of the goods and credits, when he pleaſeth: but before that Statute Fitzharbert ſeemes to be of opinion, that he might, becauſe it is requiſite, ſome perſon ſhould have that power: for (otherwiſe) the inteſtates debts could never have been recovered. *Action of debt by the Ordinary.*

50. If the Leſſor let the terme by Deed pol, and afterwards out the Leſſee,

Writ of covenant against the Lessor.

Lessee, the Lessee shall have a Writ of Covenant against the Lessor upon the Deed Pol, albeit he have no Indenture of it: But if a stranger which hath no right, out the Lessee, he shall not have a Writ of Covenant against the Lessor, because he hath remedy by action against the stranger: Howbeit if the stranger enter by eigne title upon the Lessee he shall have a Writ of Covenant against the Lessor, because (in such case) he hath no other remedy. F. N. B. 145. b.

Action against the Gaoler upon an escape.

51. If one be in Prison upon execution for debt, and makes an escape, in this case the Debtor is discharged of the debt, so as the Creditor can never renue his execution to take him againe: And therefore in as much as after the escape the Plaintiffe is without remedy against the Defendant in the first suit, the Common law, which is common Reason, provides that the Plaintiff should have an action of debt against the Goaler, in whose default the execution of the Plaintiff was discharged; for (otherwise) the Common Law should be defective in that point, which must not be: And therefore will rather permit the Plaintiff to recover against the Goaler, then that he should be left without remedy, albeit there never was any contract betwixt them. Pl. Co. 38. a. 3. in *Plats* case.

Land revested without entry or claime.

52. Regularly, when any man will take advantage of a Condition, if he may enter, he must enter, and when he cannot enter he must make a claime: for that a Freehold and Inheritance shall not cease without entry or claime: And yet if Land be granted to a man for terme of five yeares, upon condition, that if he pay the Grantor within the first two yeares fourty pounds, that then he shall have fee, or otherwise but for the terme of five yeares, and livery of seisin is made unto him by force of the Grant: In this case, if the Grantee pay not unto the Grantor fourty pounds within the first two yeares, then immediately after the first two yeares the Fee and Frank-tenement shall be adjudged in the Grantor without entry, because the Grantor cannot presently after the two yeares enter upon the Grantee, for that the Grantee hath yet a terme of three yeares in the Land, and in as much as hee cannot enter, hee shall not be driven to make any claime to the Reversion: For seeing by construction of Law, the Freehold and Inheritance (if the Condition had beene performed) was to passe: Maintenant out of the Lessor, by the like construction the Freehold and Inheritance by the default of the Lessee shall be revested in the Lessor without entry or claime: There is the same Law of a Grant by Devise, Lease and Release, Bargaine and Sale by Deed indented and inrolled, &c. or whether it be of an Advowson, Reversion, Remainder, Rent, Condition, or any other thing that lyes in Grant. Co. Inst. part 1. 218. a. 3. Litt. S. 350. Co. ibid. 218. a. 4.

Time recovered without Mon.

53. The Husband is the Wives head, and regularly shee can do nothing without him; and yet in an action of Waste if the Baron make default to the great Distresse, the Feme (upon prayer) shall be received and shall shew the whole matter, and how shee is in her Remitter, and shall barre the Lessor of his Action: And albeit this priviledge be given the Feme by Westm. 2. cap. 3. yet ancient Authors, who wrote before that Statute, do speake of such a kinde of receipt at the Common Law; for otherwise the Feme would be without remedy. Co. ibid. 352. b. 4. Litt. S. 668.

Judgement upon a dead man.

54. It seemes irregular, that Judgement should be given upon a man already dead: And yet in 8 Ed. 3. Judgement 225. the Defendant in an appeale of death did wage Battell and was slaine in the Feild, yet Judgement was afterwards given that he should be hanged, and the Justices sayd, such Judgement was necessary; because otherwise the Lord could not have a Writ of Escheate, and so would be without remedy. Co. ibid. 390. b. 4.

Co. ibid. 393. a. 4.

55. Regularly, there cannot be two recoveries in value upon one warranty, and yet in some speciall cases rather then a man shall be without remedy, there shall be two such recoveries; for if a disseisor gives lands to the Husband and Wife and to the heires of the Husband, the Husband alieneth in fee with warranty and dyeth, the Wife bringeth a Cui in vita, the Tenant voucheth and recovereth in value, if after the death of the Wife, the Disseisee bring a Precipe against the Alienee, he shall vouch and recover in value againe. Two Recoveries upon one warranty.

Co. l. 8. 61. a. 3. in *Beechers* case.

56. In all actions reall and personall, if part be found for the Demandant or Plaintiff, and part against him, or all or part against the one Tenant or Defendant, and nothing or but part against the other, the demandant or Plaintiff shall be amerced: Howbeit, in Trespasse of Battery against Baron and Feme, supposing the battery to be done by them both, and the Feme is onely found guilty, &c. and the Baron acquit, yet (in this case) the Plaintiff shall not be amerced, because the Plaintiff (in such case) can have no other Writ, and therefore he shall be excused, Vide Max. 149. 41. No amercement against the Plaintiff.

57. Vide 143. 15.

Dyer, 8. 2. 28. H. 8. Pl. 11. & 16.

58. In a Writ of Ward, the Writ supposeth that B. held the land, &c. and the Count declareth that B. was but Cestuy que use, so as the Feoffees held the land, and not B. Here, this variance is no Error, because the Statute of 4 H. 7. which gives the wardship of Cestuy que use appoints no speciall Writ for it, and therefore the generall Writ and speciall Count sufficeth; for otherwise the Lord should be without remedy, which the Law will not permit: So in a Warrantia Cartæ, the words of the Writ are Unde cartam habet, and yet the Count may be upon warranty for Homage Ancestrel. Variance in writ and count, no error.

Dyer 56. 17. 38 H. 8.

59. A Writ of Right (Quia Dominus remisit Curia, &c.) was brought by Baron and Feme, the Feme being under age, the Feme appeares by Procheine amie, who was admitted by the Court, and upon the Tenants voucher and default of the Vouchee shee had judgement finall, &c. without her Husbands appearing in the action. Vide supra 10. Feme Covert.

Dyer 206. 11. 3, 4. *Eliz.*

60. A man makes a Lease for yeares to begin at a day to come, and before the day the reversion is granted over divers times, afterwards the Termor enters and makes waste, and the fourth Assignee bring waste, and counts of the assignment and tenure of each of them, to whom the Land came after the Lease, albeit there was no tenure before the commencement of the Lease, and it was held good, and so it is also in the Regester. Waste.

Hob. 3. *Pinscombes* case.

61. Albeit (regularly) a warranty ought onely to be annexed to a freehold, and not to any lower estate, yet when the breach or impeaching is not of a Freehold, but of a chattell, Viz. of a Lease for yeares, for which there can neither be Voucher, Rebutter, nor Warrantia Cartæ, an action of Covenant may be grounded upon such a Warranty: As if A. demiseth the Pannor of D. to B. for one and thirty yeares, and afterwards grants it to C. in possession for life, with warranty against him and his Ancestors, C. may bring an action of Covenant upon that Warranty, and shall recover damages thereupon. See the Book at large. Warranty in Covenant.

Hob. 48. *Coxes* case.

62. Lands in Ancient demesne, where the possession is stirred, cannot be recovered but within their owne Franchise or Jurisdiction, and this is regularly true; yet actions at the Common Law, upon which no remedy can be had in ancient demesne, do lye in the Kings Court, though they stir the possession, as in a Quare impedit, 7 H. 6. 35. because they cannot write to the Bishop: And the reason is, because the Common Law being as ancient as their priviledge is, will not endure that by pretence of Priviledges there should be a Failer of Originall Right, Ancient demesne.

might, as that case is: Notwithstanding, all new rights or remedies brought in by Statutes (which are not presumed to intend their prejudice) it is otherwise.

146. It hateth Wrong.

Disparagement of the heir punished. Co. Inst. pars 1. 80. b. a.

1. The Law doth hate and abhorre the odious and corrupt dealing of any man, and never lets it go unpunished: And therefore in case of a Ward, where he is disparaged by his Guardian, the Law doth so abhorre the odious dealing of the Guardian, to whom the custody of the Heire is committed; and his horrible prophanation of honourable Marriage, the manly ligament of mens Inheritances, that albeit the Heir at the age of fourteen may dissent to it, and so dissolve it by such his disagreement, yet the Law inflicted upon the Guardian for his attempt, the losse of the wardship from such disagreement, according to the Statute of Merton, cap. 6. being but an affirmance of the Common Law.

No breaking of Inclosures for rent. Co. ibid. 161. a. 3.

2. If a Lord or a Grantee, or &c. come to his Tenants land to distrain for rent arrere, and he finds the doores or gates shut, so that he cannot take the Tenants goods or cattell without breaking open the doores, gates, or other inclosures: In this case, albeit the Law gives him power to distraine, it doth not licence him to break open any doores, gates, or other inclosures to distraine, for by so doing he becommes a wrong doer: Notwithstanding, if he were before actually seised of the rent, if they be shut on purpose to prevent him to distraine, it amounts to a disseisin of the rent.

A Disseisor may be no Tenant of the land. Co. ibid. 188. b. 3.

3. If diverse persons disseise another to the use of one of them, or of another that assents, in this case, albeit he onely, to whose use the disseisin is made is the sole Tenant of the land, yet the Law doth so abhorre wrong, that the Confusings, Counsellors, Commanders, &c. thereunto are all Disseisors; and therefore albeit the Tenant (whether he be a Disseisor or no) bye, yet an Assise lyeth against the Confusors, Counsellors, Commander, &c. 50 E. 3. 2. The Demandant and others in a Precipe did disseise the Tenant to the use of the others, and the Writ did not abate, for the Demandant was a Disseisor, though not Tenant of the land, but onely a Confusor, and therefore an Assise lyeth against him, in respect of the wrong done by him, as aforesaid. A man disseiseth Tenant for life to the use of him in the reversion, and after the Reversioner agreeth to the disseisin: In this case it is said, That the Reversioner is a Disseisor in fee, because by the disseisin made by the stranger, the reversion was devested, which (say they) cannot be reversed by the agreement of the Reversioner, for that makes him a wrong doer, and therefore no relation as an estate by wrong can helpe him.

Release to one Disseisor. Litt. S. 306. Co. ibid. 194. a. 3. Litt. S. 472. & S. 522.

4. A man seised of Lands is disseised by two, and releaseth all his right to one of the Disseisors: in this case, the Releasee shall hold out his companion, because the two Disseisors being in by wrong and against the Law, when one of them hath a lawfull interest by the release of the Disseisee, the wrong vanisheth and is utterly extinct, for the Releasee being seised per my & per tout, is thereby capable of the whole estate: It is so also of two joynt Abators or Intruders, which come in meerely by wrong; for by operation of Law, presently upon the delivery of the Release, the whole Freehold and Inheritance is vested in the Releasee, and all the estate that the other Disseisor, Abator, or Intruder hath who hath devested; because right and wrong cannot consist together, but the wrongfull estate giveth place to the rightfull: Vide 141. 13.

Co. ibid. 239. a. 1.

5. No eſtate gained by wrong makes a degree, whereupon to ground a Writ of Entry in the per & cui, but it ought to be upon a lawfull deſcent or alienation; And therefore an Abatement, intruſion, or diſſeiſin upon diſſeiſin make no degree. An eſtate by wrong in degree.

Co. ibid. 245. a. 4.

6. If an Infant make a Feoffment in fee, a ſtranger (of his owne head) cannot enter to the uſe of the Infant, for the eſtate is upon lawfull conveyance, though voydable, but where an Infant of full age is diſſeiſed, an Entry by a ſtranger of his own head is good, and veſteth preſently the eſtate in the Infant or other diſſeiſee: As if Tenant for life make Feoffment in fee, albeit that be a lawfull Conveyance, yet becauſe ſuch a Feoffment is a wrong to the Reverſioner, by the Entry of a ſtranger (of his own head) for a Forfeiture by the name of the Reverſioner, the eſtate ſhall be immediately veſted in the Reverſioner. By entry of a ſtranger an eſtate gained by wrong deſcended.

Co. ibid. 257. b. 1.

7. In a Writ of forcible Entry upon the Statute 8 H. 6. 9. albeit the Statute gives only treble damages to the party grieved; yet he ſhall alſo have treble coſts allowed him, if he recover: for although the Statute be penall, and (in that reſpect) ſhould be favourably expounded, yet in as much as it is a wrong of a high nature, treble coſts are alſo interpreted to be given by it. Treble coſts by the Stat. of H. 6. cap. 9.

Co. ibid. 278. b. 2.

8. If an Alien be a Diſſeiſor, and obtaine Letters of denization; and then the Diſſeiſee releaſeth to him: in this caſe, the King ſhall not have the Land: for the releaſe hath alleyed the eſtate, and it is as it were a new lawfull purchaſe: It is otherwiſe if the Alien had been the Feoffee of a Diſſeiſor, for in ſuch caſe, he claimes under one, that gained the eſtate by wrong. Aliens releaſement good.

Litt. S. 697. Co. ibid. 365. a. Co. ibid. 366. b. 2. Litt. S. 698. Co. ibid. 366. b. & 367. a.

9. Before the Statute of Glouceſter cap. 3. 6 E. 1. All legall warranties both lineall and collaterall were a bar to the heire: but at the common Law (before that Statute) warranties, that did commence by diſſeiſin, were never any bar to the heire, becauſe they did commence by tort. viz. by diſſeiſin: For (regularly) the Conveyance, whereunto ſuch warranty is annexed, doth worke a diſſeiſin: As if the Father or other Anceſtor be Tenant of the Sons or Heires Land for years, at will, by Elegit, Statute-merchant, or Statute-ſtaple, and the Father or other Anceſtor makes a Feoffment in fee of the Land to a ſtranger with warranty, this warranty ſhall not bar the Heire, unleſſe he have other Lands, that may be aſſets, by deſcent from the ſame Father or other Anceſtor reſpectively, in all which caſes the diſſeiſin is immediately to the heire: Howbeit in ſome caſes, albeit the diſſeiſin be not done immediately to the heire, yet the warranty ſhall not bar him: As if the Father be Tenant for life, the Remainder to the Son in fee, the Father by covin and conſent maketh a Leaſe for years, to the end that the Leſſee ſhall make a Feoffment in fee, to whom the Father ſhall releaſe with warranty, and all is executed accordingly, the Father dyeth, this warranty ſhall not binde, albeit the diſſeiſin was not done immediately to the Son, for the Feoffment of the Leſſee is a diſſeiſin to the Father, who is particeps criminis: So it is, if one grother make a gift in tail to another, and the Uncle diſſeiſe the Donee, & enfeoffeth another with warranty, the Uncle dyeth, and the warranty deſcendeth upon the Donor, and the Donee dyeth without iſſue: here, albeit the diſſeiſin was done to the Donee, and not to the Donor, yet the warranty ſhall not bind him. The Father, the Son, and a third perſon, are Joynt-tenants in fee, the Father maketh a Feoffment in fee of the whole with warranty & dyeth, the Son dyeth, the 3. perſon ſhall not only avoid the Feoffment for his own part, but alſo for the part of the ſon, & he ſhall take advantage that the warranty commenced by diſſeiſin, though the diſſeiſin be done to another. If a man commit a diſſeiſin to the intent to make a Feoffment in fee with warranty, albeit Warranty commenced by diſſeiſin, batters, & intruſion, no bar.

he

he make the Feoffment many years after the diſſeiſin, yet becauſe the warranty was done to that intent and purpoſe, the Law ſhall adjudge upon the whole matter, and by the intent couple the diſſeiſin and warranty together: And all this, becauſe ſuch diſſeiſins commence by wrong: So it is alſo of a warranty that commenceth by abatement or intruſion (that is when the abatement or intruſion is made of intent to make a Feoffment in fee with warranty) for neither ſhall that bind the right heire no more then a warranty that commenceth by diſſeiſin, becauſe they do alſo commence by wrong: Likewiſe, if the Tenant dyeth without heire, and the Anceſtor of the Lord enter before the entry of the Lord, and make a Feoffment in fee with warranty, and dyeth, this Warranty ſhall not bind the Lord, becauſe it commenceth alſo by wrong, being in the nature of an Abatement, Et ſic de ſimilibus.

A unlawfull fine not ſufficient to paſſe.

10. This exception in the Statute of Gloceſter cap. 3. 6 E. 1. (whereof no Fine is levied in the Kings Court) are to be underſtood lawfully levied; And therefore if the Baron will levy a Fine of the Femes Land without the Feme, the Judges (being conuſant thereof) ought not to take it; becauſe it worketh a wrong to the Feme, and if it be with warranty to the heire alſo: Neither (indeed) ought the Judges to take a Fine, which worketh a wrong to a third perſon. Litt. S. 729. 730, 731. Co ibid. Co. ibid. 383. a. 3.

Domini pro tempore, difference.

11. Domini pro tempore of a Copy-hold Manor, who are in by lawfull title, though it be onely for years, by Statute Merchant, Staple, or Elegit, at will, for wardſhip in Chivalry, &c. may hold Courts, make admittances, and grant voluntary Copies of antient Copyhold lands, which come into their hands, and ſuch voluntary grants by Copy made by ſuch particular Tenants, as aforeſaid, ſhall bind him that hath the Freehold and Inheritance, becauſe all theſe be lawfull Lords pro tempore: Alſo Diſſeiſors, Abators, Intruders, Tenants at ſufferance, &c. of ſuch Manors, who come in by tort, and hold by defeaſible titles, may hold Courts, and make admittances of ancient Copyhold lands which ſhall ſtand good againſt them that right have: becauſe theſe are lawfull acts, and they are compellable to do them: But voluntary Grants by Copy made by Diſſeiſors, Abators, Intruders, Tenants at ſufferance, or others, that have defeaſible titles, ſhall not bind the Diſſeiſee, or others, that right have, becauſe they come in by tort, as aforeſaid. Co. ibid. 58. b. 1. Co. l. 4. 24. p. 29. *Elix. inter Rouſe and Artis.*

Livery of parcel good.

12. If Feoffment be made of a Meſſuage, cum pertinentijs, the Leſſor parts with nothing thereby but onely that which is parcell of the houſe, viz. the buildings, curtilage, and garden: Howbeit the keeping of the poſſeſſion of a houſe, or any parcell of the thing demiſed againſt tortious entry and expulſion by the Leſſor, is not onely poſſeſſion of all, that may paſſe by the name of Meſſuage, or of ſuch parcell, but of all the lands, &c. which are demiſed therewith by one intire demiſe in the ſame County: And therefore, if a Leaſe for years be made of an houſe, a cloſe, and divers other Lands, and the Leſſor makes Livery of the Cloſe, in the name of the whole in Leaſe, the Leſſee being then in the houſe, and no body for him in the cloſe: In this caſe, the Livery is void, for the poſſeſſion of the houſe by the Leſſee at the time of the Livery made is poſſeſſion alſo of all the Lands, &c. contained in the demiſe: becauſe it is to preſerve the firſt right and intereſt of the Leſſee againſt force, and the tortious entry of the Leſſor: It is ſo alſo, albeit the Leſſee had then demiſed that cloſe by will: but otherwiſe, if he had demiſed it for years; for that had made a ſeverance of it from the reſt of the Meſſuage and Lands demiſed. Co. l. 2. 32. a. 1. in *Beliſworths* caſe.

Election loſt by wrong, &c.

13. If one enfeoffe another of two acres, to have and hold the one for life, and the other in tail: In this caſe, the Feoffee hath election to chooſe, which he ſhall have for life, and which in tail: Howbeit, if before his election he makes Feoffment in fee of both the acres: In ſuch caſe, the Co. l. 2. 37. a. 4. in Sir *Rowland Heywards* caſe.

the Feoffor ſhall enter into which of the acres he pleaſeth for the Forfeiture, for the Feoffee by his own act and the wrong done to the Feoffor hath loſt his election.

Co. l. 2. 55. b. 4. in *Bucklers* caſe. 14. Tenant for life, leaſes for years, and then grants to A. for life from a day to come, the Leſſee for years attornes after the day, the terme expires, and A. enters and leaſes at will, the Leſſee for life levies a Fine Come ceo, &c. to the Tenant at will, and then the Remainder enters for the Forfeiture: In this caſe, the Fine levyed to the Tenant at will is a Forfeiture, and the Remainder may thereupon well enter upon the Tenant at will, and thereby charge the diſſeiſin; And here, albeit neither the Tenant for life, nor the Tenant at will have any thing in the Land (for the intereſt of the Tenant for life is paſt away to A. and the title of the Tenant at will, is of little or no conſideration in Law, and alſo vaniſheth, becauſe derived from A. who had no intereſt, becauſe granted in futuro, and therefore void) yet both of them are admit to ſay, Quod partes finis nihil habuerunt; And of ſuch eſtoppels, which are by matter of Record, and tend to the wrong and diſherition of thoſe in Remainder or Reverſion, they ſhall take advantage, albeit they are not parties thereunto; as of an Ayde prier of a ſtranger, or by acceptance of a Fine Sur conuſans de droit come ceo, &c. albeit the Reverſioner or Remainder be not partie to the Record, yet he is privy in eſtate to take advantage of a Forfeiture by any matter of Record done to his diſheriſon.

Eſtoppell to plead part of a fine will not barre.

Co. l. 5. 13. b. in the Counceſs of *Shrewſburies* caſe. Dyer, 122. b. 15. Tenant at will is not chargeable with permiſſive waſte, as negligently ſuffering the houſe to be burnt, or the like: but if Tenant at will commit voluntary waſte, viz. in diſtroying the houſes, felling the wood, or the like, in ſuch caſe a generall Action of Treſpaſſe lyeth againſt him (Vide Litt. fol. 15.) for when Tenant at will takes upon him to do unlawfull Acts, and ſuch as none may do but the owner of the Land, they amount to a determination of the will, and of his poſſeſſion, and the Leſſor (in ſuch caſe) ſhall have a generall Action of Treſpaſſe without any Entry: ſo if the Bailee of goods, as a horſe, &c. kill them, the Bailor ſhall have a generall Action of Treſpaſs, for by the killing the privity is determined: And (in ſome caſes) when confidence is put in the party, if any wrong be done, an Action upon the Caſe may alſo lye for negligence, albeit the Defendant come to the Poſſeſſion by the Act of the Plaintiff, as where a man delivers a horſe to another to be ſafely kept, and the Defendant equum illum tam negligenter cuſtodivit, quid ob defectum bonæ cuſtodiæ Interijt, here an Action upon the caſe will lye: ſo it is alſo againſt a Shepheard, that keepes any Sheep ſo negligently, that ſome of them are thereby drowned, or otherwiſe deſtroyed.

Tenant at will chargable with voluntary waſte.

15. E. 4. 26.

12 E. 4. 13.

Co. l. 5. 14. b. 2. in the caſes of Eccleſiaſticall perſons. 16. Regularly, the King ſhall not be bound by an Act of Parliament, unleſſe he be therein particularly named, and yet all Statutes, which are made to ſuppreſs wrong, and to take away fraud ſhall bind the King, albeit he be not named in them by expreſs words, for Religion, Juſtice, and Truth are the ſure ſupporters of the Diadems of Kings: And therefore it is agreed in 35 H. 6. 60. that the King ſhall be bound by the Statute of Weſt. 2. cap. 5. which makes proviſion againſt tortious uſurpations, although the King be not named in the Act: ſo in the Lord Barkleys caſe (reported by Maſter Plowden) if a gift in tail be made to the King, he ſhall not alien to defraud him in the Reverſion or his Iſſues, but is bound by the Statute of Weſt. 2. de donis conditionalibus.

Statutes in generall do not bind the King.

Co. l. 5. 27. b. 2. in *Ruſſels* caſe. 17. An Infant Executor brings an Action of Trover and Converſion for a Cheſt with divers ſummes of money and Jewels in it, the Defendant pleads a releaſe of the Plaintiff: In this caſe, albeit a releaſe by him upon payment of money, or delivery of a Legacy, and all Acts in purſuance

A releaſe to Infant Executor.

ſuance of his office of Executor are ſtrong and good, yet a releaſe (in this caſe) is adiudged not valid to bind him; becauſe firſt, it would amount to a devaſtavit, and then the infant ſhould be chargeable to anſwer it of his own goods: and ſecondly, it would be a wrong, which an infant by his releaſe can never do.

Reſtraint by condition, if there be a *tort*.

18. If a man make a gift in tail, upon condition that he ſhall not alien, this condition to ſome intent is good, and to other ſome void; for if he make a Feoffment in fee, or any other eſtate, whereby the Reverſion is diſcontinued tortiouſly, the Donor ſhall enter for the condition broken; for every act, that is prohibited by Law, or maketh a tort, a man may prohibit by condition (Vide 10 H. 7. 11.) Howbeit if in ſuch caſe the Donee ſuffer a common Recovery, the condition cannot by the Law extend to it, becauſe that is lawfull, whereas the other is tortious and againſt Law: So if Feoffment be made to Baron and Feme in fee, upon condition, that they ſhall not alien: in this caſe, they are not thereby reſtrained to alien by levying a Fine both of them together, becauſe that is lawfull and incident to their eſtate; but they cannot alien by Deed, becauſe that is tortious and againſt Law: likewiſe, if a man enfeoff an Infant in fee, upon condition, that he ſhall not alien, this ſhall not reſtraine him to alien at his full age, for that were repugnant to the liberty, that the Law gives in caſe of Fee-ſimple (according to Litt. fo. 84. a.) Howbeit ſuch a condition ſhall reſtraine him from alienating during his non-age, for that is tortious and againſt Law, and thereupon the Feoffor ſhall enter, &c.

Co. l. 6. 41. b. 1. in Sir *Anthony Mildmays* caſes.

Co. Inſt. pars 1. 223. b. 4.

Wrong cannot incorporate with wrong.

19. There is ſuch an extreame enmity betwixt an eſtate gained by wrong, and the ancient right, that the right cannot poſſibly incorporate it ſelfe with an eſtate gained by wrong, but it will rather ſuffer extinguiſhment, then paſſe with it: And therefore if the Donee be diſſeiſed, and the Donor diſſeiſe the Diſſeiſor, and make Feoffment in fee, and the Donee make regreſſe, the Donor ſhall not have the Reverſion but the Diſſeiſor; for there is a diverſity betwixt an eſtate and a right, as where the Reverſioner diſſeiſeth the Donee or Leſſee for life, and then makes Feoffment in fee, upon regreſſe of the Donee or Leſſee, the Reverſion is left in the Feoffee, and this is by force of the Feoffment, but where the Donee or Leſſee is diſſeiſed, here the Reverſioner hath but a right, which he cannot transfer to another; and therefore when he diſſeiſeth the Diſſeiſor and makes Feoffment, this paſſeth the eſtate, which he gained by Diſſeiſin, and extinguiſheth his ancient right, which he could not transfer to another, and then the firſt Diſſeiſor hath the firſt poſſeſſion, and a better right then the Feoffee of the Reverſioner, becauſe he comes in under him, who diſſeiſed the firſt Diſſeiſor, and hereby the ancient right is extinct: for the Reverſioner cannot have it, becauſe that would be repugnant to his own grant, neither can the Feoffee have it, becauſe a right cannot be transferred, and the Law will not (in this caſe) ſuffer the Diſſeiſor to have it, becauſe right and wrong cannot cohabit together, and therefore it ſhall rather extinguiſh: So likewiſe if the Diſſeiſee diſſeiſe the heire of the Diſſeiſor, here he gaines the eſtate by wrong, viz. by Diſſeiſin, having the ancient right; in this caſe, if he make Feoffment in fee to another, he thereby paſſeth away the eſtate which he gained by Diſſeiſin, and extinguiſheth his ancient right, ſo that the heire, when he re-enters, ſhall retaine the Land as well againſt the Feoffor as againſt the Feoffee.

Co. l. 6. 7 a. a. 1. in Sir *Moyle Finches* caſe.

Diſſeiſor ſolely the doer.

20. If a Diſſeiſor make Feoffment in fee, and the Feoffee cuts down Trees, Graſſe, grain, growing upon the ground, &c. if the Diſſeiſee re-enter, he ſhall not have an Action of treſpaſs vi & armis againſt the Feoffee, that came in by title; ſo it is alſo if he had made a gift in tail or a leaſe for life or years of the Land, becauſe they come in by title, but in

Co. l. 11. 51. a. 4. in *Rich. Liford's* caſe.

in ſuch caſe the Diſſeiſee ſhall recover all the meane profits againſt the Diſſeiſor, as the Diſſeiſee (in ſuch caſes) ſhould have recovered damages againſt the Diſſeiſor in an Aſſiſe at the common Law before the Statute of Glocester cap. 1. There is the ſame Law alſo, if the Diſſeiſor be diſſeiſed, an Action of Treſpaſſe doth not lye againſt the ſecond Diſſeiſor, for he may come in by title, and if he ſhould be charged, he might then be doubly charged, viz. both by the Diſſeiſee and alſo by the firſt Diſſeiſor; and this fiction of Law, that the Frank-tenement hath alwayes continued in the Diſſeiſee (which ought to be the ground of the Action of Treſpaſs) ſhall not have relation to make him, that comes in by title, or upon a ſecond Diſſeiſin to be a wrong-doer, againſt whom an Action of Treſpaſs may be brought: Howbeit, if one diſſeiſe me, and during the Diſſeiſin he cuts down the Trees, Graſs, graine, &c. and after I re-enter; in this caſe, I ſhall have an Action of Treſpaſs vi & armis againſt him for the Trees, Graſs, Graine, &c. for after my regreſs the Law (by fiction) as to the Diſſeiſor and his ſervants ſuppoſeth that the Frank-tenement hath alwayes continued in me, and he onely (by conſtruction of Law) ſhall be adjudged the wrong-doer, which fiction cannot extend to him that comes in by title, or upon a ſecond Diſſeiſin, &c.

Co. l. 11. 72. b. 4. in *Magdalen Colledge* caſe. 21. The Statute of Weſt. 2. cap. 5. Quod quotieſcunque aliquis jus non habens tempore hujuſmodi cuſtodiarum, &c. preſentaverit, &c. which was made to ſuppreſs wrong, ſhall bind the King: And therefore it is well ſaid in 24 E. 3. 41. That the Law is reaſon and equity to doe right to all, and to preſerve men from wrong and miſchief, for the Law will never make conſtruction againſt Law, Equity and Right. The King bound. The law preſerves right.

Pl. Co. 64. b. 3. in *Dive* and *Manningbams* caſe. 22. Albeit the Statute of 23 H. 6. 10. (which prohibits Sheriffs to take ſecurity of perſons taken in execution, to the end to let them goe at large) had not been made, yet a Bond had been void at the Common Law: For ſuch a Priſoner by the Common Law is not mainparnable, and then the letting of him goe at large by Mainpriſe is a wrong, and a thing done againſt the Law, and (by conſequent) the Obligation is made to ayde the Sheriff for a wrong done by him, in which caſe (even by the order and courſe of the Common Law) the Obligation is void: So if an Obligation be made to ſave one harmleſs for killing ſuch a man, or to commit ſuch a Treſpaſs, &c. in ſuch caſes, the Obligation is void by the Common Law: And therefore if the Plaintiff in a Replegiare hath a Withernam out of the Common Pleas, by force whereof one of the Sheriffs Bayliffs takes foure beaſts in the name of Withernam, and after delivers them againe to the Defendant, and the Defendant is bound to ſave the Bayliff harmleſs for the foure beaſts, who afterwards being damnified, brings his Action of debt upon the Obligation: In this caſe (as it held by the better opinion in M. 2. H. 4. fol. 9. Fitz. Obligation 83. and Br. 20.) the Obligation is void, for the Writ of Withernam is, Capias in Withernam, &c. et ea detineas quouſque, &c. ſo as the Sheriff ought to have kept the Cattell, and not to have delivered them to the party, for that was a wrong, and therefore the Obligation made to defend him for that wrong is void. Obligation made to defend one in his wrong void.

147. So as none ſhall take benefit or advantage of their own wrong.

Litt. S. 19. Co. Inſt. pars 1. 23. a. 3. 1. Upon a gift in tail the Rule of Law is, that the Donees and their iſſues ſhall do to the Donor and his heires ſuch ſervices, as the Donor doth to his Lord Paramont: And yet if a man ſeiſed in right of his wife of Land holden by Knight-ſervice in tail, that Land generally, the Donee ſhall Tenure by Knight-ſervice.

shall not hold of him by Knight-service; because his wife held the land, and he had nothing but in her right, and (in that case) the Baron having gained a new Reversion by wrong shall not take advantage of his owne wrong, but such a Donee shall only hold by Fealty, which is incident to all tenures.

Rent-charge apportioned.

2. Regularly, a whole Rent-charge is extinct by the purchase, or otherwise gaining of the Possession of part of the Land, out of which it is issuing: And yet in some cases a Rent-charge shall not be wholely extinct, where the Grantee claimeth from and under the Grantor: As if B. maketh a Lease for life of one Acre to A. and A. is seised of another Acre in fee, A. granteth a Rent-charge to B. out of both the Acres, and doth waste in the Acre which he holdeth for life, B. recovereth in waste: In this case, the whole Rent is not extinct, but shall be apportioned, and yet B. claimeth the one Acre under A. and the reason hereof is, for that no man shall take advantage of his own wrong, Nullus commodum capere potest de injuria sua propria: for seeing the waste was committed by the act, and wrong of the Lessee, he shall not take advantage thereof to extinguish the whole Rent: And the whole Rent cannot issue onely out of the other Acre, because the Lessor hath the one Acre under the estate of the Lessee, and therefore in such case it shall be apportioned: So it is also if A. had made a Feoffment in fee, and B. had entred for the Forfeiture, in that case also the Rent shall be apportioned, and not wholely extinct: causa qua supra. Co. ibid. 148. b. 4.

Re-disseisin against the Feoffee.

3. A re-disseisin doth lye against the Re-disseisor, but likewise against his Feoffee: for, otherwise the Re-disseisor might prevent the Plaintiff of his Re-disseisin, and so take advantage of his owns wrong. Co. ibid. 154. b. 2.

Challenge to the Array.

4. If the Plaintiff or Defendant have an Action of debt against the Sheriff, this is a good cause of challenge to the Array, but albeit the Sheriff hath an Action of Debt against either party, this is no good cause of challenge: for, the failer of paying a debt to the Sheriff is a wrong, and against Law, and if either party might challenge for such cause, he should take advantage of his own wrong. Co. ibid. 159. a. 2.

Distrell distained out of the fee.

5. If the Lord come to distraine Cattell, which he seeth then within his fee, and the Tenant or any other (in his behalfe) to prevent the Lord to distrain, drive the Cattell out of the Lords fee into some other place, yet may the Lord freshly follow, and distraine the Cattell, and the Tenant cannot make rescous, albeit the place, in which the Distress is taken, is out of his fee: for if by such a shift the Tenant might prevent the Lord of his Distress, he should take advantage of his own wrong And therefore in such case in Judgment of Law the Distresse is taken within his fee, and so shall the Writ of Rescous suppose, in case the Cattell be rescued: but it is otherwise of cattell to be distrained for Damage-feasant, for they must be Damage-feasant at the time of the Distress. Co. ibid. 161. a. 2. Co. L. 9. 22. a. 3. in the cases of Avowry. 44 E. 3. 20. per *Thorpe*.

Condition abone, Bond valid.

6. If a man make a Feoffment in fee upon Condition, that the Feoffee shall re-enfeoff him before such a day, and before that day the Feoffor disseise the Feoffee, and hold him out by force untill the day be past: In this case, the estate of the Feoffee is absolute, for the Feoffor is the cause wherefore the condition cannot be performed, and therefore shall never take advantage for the non-performance thereof: So it is also if A. be bound to B. that J. S. shall marry J. G. before such a day, and before the day B. marry with J. he shall never take advantage of the Bond, for that he himself is the mean, that the Condition could not be performed. Co. ibid. 206. b. 2.

Obligation

7. If a man be bound to A. in an Obligation to enfeoff B. (who is a meere stranger) before a day, the Obligor doth offer to enfeoff B. and he refuseth: In this case, the Obligation is forfeite, for the Obligor hath taken upon him to enfeoff him, and his refusall cannot satisfie the Condition: but if the Feoffment had been by the condition to be Co. ibid. 209. a. 2.

made to the Obliger, or to any other for his benefit or behoof, a tender and refusall shall save the Bond, because he himselfe (upon the matter) is the cause, wherefore the Condition could not be performed, and therefore shall not take advantage thereof to give himselfe cause of Action thereby.

Co. Inst pars 1. 210. b. 3. Litt. S. 340. Tender excused.

8. If Feoffment be made upon Condition to pay the Feoffee twenty pounds upon a certaine day: In this case, the Feoffor is bound to find out the Feoffee, and to make tender thereof unto him if he be in England: but if he be out of the Land, he is not bound to seek him, nor to go out of the Realme unto him: Neither shall the Feoffee take advantage of his own absence, but the Feoffor shall enter into the Land, as if he had duly tendred it according to the Condition, because the Feoffee himselfe was the cause, that the Feoffor could not make due tender at the day limited for the payment thereof.

Litt. S. 355, 356. Co. ibid. 220. b. 4. Disability.

9. If Feoffment be made upon condition to enfeoff another, or to make a gift in tail to another, &c. And the Feoffee before the performance of the Condition enfeoffs a Stranger, or makes a Lease for terme of life: In this case, his Feoffee or Lessee shall not have the Land, for then he should take advantage of his own wrong, but the Feoffor and his Heires may enter, because the Feoffee hath disabled himselfe to performe the Condition: So it is also if he had made but a Lease for years, for the estate ought to be in the same plight at the time of the re-enfeoffment, that it was in at the time, when he took the estate.

Litt. S. 383. Co. ibid. 236. a. 4. Laches.

10. If Lands be devised to be sold by his Executor; in this case, the Executor is bound by the Law to sell them as soone as he can; for (otherwise) he shall take advantage of his own Laches.

Co. ibid. 238. b. 2. Grandfather, Father, and Son.

11. If there be Grand-father, Father, and Son, and the Son disseiseth one, and enfeoffeth the Grand-father, who dyeth seised, and the Land descendeth to the Father; Now is the Entry of the Disseisee taken away; but if the Father dye seised and the Land descend to the Son; In this case, is the Entry of the Disseisee revived, and he may enter upon the Son, who shall take no advantage of the descent, because he did the wrong unto the Disseisee: And the Law were the same, if the Land had not descended to the Sonne, but the Sonne had been in by purchase, as by Feoffment in fee, in tail, or for life, from his Father, yet may the Disseisee enter upon him, for he shall in no kind take advantage of his own wrong.

Litt. S. 395. Co. ibid 242. a. 1. The like.

12. If a Disseisor enfeoff his Father in fee, and the Father dye seised, whereby the Land descends to the Disseisor, as his Sonne and Heire, &c. In this case, the Disseisee may well enter upon the Disseisor, notwithstanding the descent, because he being particeps criminis, shall take no advantage of his own wrong: for albeit a descent be cast, and the Entry of the Disseisee taken away, yet if the Disseisor cometh to the Land againe, either by descent or purchase of any estate of Free-hold, the Disseisee may enter upon him as have his Assise against him, as if no descent or meane conveyance had been, causa qua supra.

Co. ibid. 247. a. 3. in *Beverleys* case. Co. l. 4. 125. a. 3. A Drunkard.

13. The heir of one, that is non compos mentis, (as an Ideot, Lunatique, &c.) shall after his Ancestors death avoid a descent: but neither a Drunkard himselfe nor his heir shall avoid it: for, albeit some are of such a beastly humor to be (in a manner) alwayes in that condition, yet neither he nor his heire shall thereby avoid a descent cast: because then his drunkennesse would be an advantage to him or his heir, which ought not to be, but doth aggravate his offence, he being thereby to be reputed rather Voluntarius Daemon, then non compos mentis.

14. Non

Profeſſion makes no deſcent.

14. Profeſſion in Religion ſhall not make a deſcent to take away Entry; becauſe it is the Diſſeiſors owne act, whereof neither he nor his heire ſhall take advantage: So if a man be Tenant or Defendant in a reall or perſonall Action, and hanging the Suit, the Tenant or Defendant entreth into Religion, by this the Writ ſhall not abate; Cauſa qua ſupra, there is the ſame Law of a Reſignation, &c. but not of a Depoſition or Deprivation, becauſe he is expelled by Judgement, and yet his offence, &c. was the cauſe thereof: Sed in preſumptione legis, Judicium ſemper redditur indiviſum. Litt. S. 410. Co. ibid. 248. b. 4.

Baron and Feme waſte.

15. If Land be given to a Feme ſole for life, and after ſhee take Baron, and the Reverſioner confirmes the eſtate of the Baron and Feme to hold for their two lives; here the Baron hath an eſtate for life in the Land by way of Remainder (as Littleton termes it, S. 525.) or (as others call it) by way of Reverſion; but howeber it enures to him by way of encreaſe or inlargement of eſtate, or otherwiſe, he is ſeiſed of an eſtate for life in the Land: And yet in this caſe, if the Husband commit waſte, an Action of waſte ſhall lye againſt Husband and Wife, notwithſtanding the meane Remainder, becauſe the Husband himſelfe committeth the waſte and doth the wrong, and therefore ſhall not excuſe himſelfe for his committing of waſte, in reſpect he himſelfe hath the Remainder, no more then if a man leaſeth to A. during the life of B. the Remainder to him during the life of C. if he commit waſte, an Action of waſte ſhall lye againſt him. Litt. S. 525. Co. ibid. 299. b. 3.

Forfeiture.

16. A. Tenant for life, the Remainder to B. for life, the Remainder in tail, the Remainder to the right heires of B. A. and B. joyne in a Feoffment by Deed; here, albeit it may be ſaid, that this is the Feoffment of A. and the confirmation of B. and conſequently he in the Remainder in tail cannot enter for the forfeiture during the life of B. yet becauſe B. joyned in the Feoffment, which was tortious to him in the Remainder in taile, and is particeps criminis, they have both forfeited their eſtates, and he in the Remainder in tail ſhall enter for the forfeiture. Co. ibid. 301. b. 3.

Covin with a Diſſeiſor, on remitter.

17. If the Baron diſcontinue the Land of the Feme, and the Diſcontinuee is diſſeiſed, and after the Diſſeiſor lets the Land to the Baron and Feme for life: in this caſe the Feme is remitted, albeit the Baron were (in this caſe) of covin with the Diſſeiſor, but if the Baron and Feme were of Covin, that the Diſſeiſin ſhould be done, in that caſe the Feme is not remitted, for ſhe ſhall not any way take advantage of her own wrong: So if Tenant in tail and his iſſue diſſeiſe the Diſcontinuee to the uſe of the Father, and the Father dyeth, and the Land diſcendeth to the iſſue: In this caſe, the iſſue is not remitted againſt the Diſcontinuee, in reſpect he was privy and party to the wrong whereof therefore he ſhall not take any advantage, but in reſpect of all others he is remitted and ſhall deraigne the firſt warranty. Litt. S. 678. Co. ibid. 357. b. 2.

Covin.

18. A. and B. Joynt-tenants are entitled to a reall Action againſt the Heire of the Diſſeiſor, A. cauſeth the heire to be diſſeiſed, againſt whom A. and B. recover and ſue execution: In this caſe, B. is remitted, for that he was not party to the Covin, and ſhall hold in common with A. but A. is not remitted, becauſe he was of Covin, and ſhall not take advantage of his own wrong. Co. Inſt. part 1. 357. b. 3.

Condition broken by deviſe.

19. A. deviſeth Land to his Wife, upon Condition that ſhee convey them in convenient time to certaine perſons in truſt for the maintenance of a Free-ſchoole: the Teſtator dyes, and his Wife demiſed the Land to a ſtranger for yeares: in this caſe the Condition is broken, and the next Heire ſhall enter, becauſe by the Co. l. 1. 25. b. 3. Porters caſe.

vemike thee hath diſabled her ſelfe to convey them according to the Condition, viz. in the ſame plight ſhe had them, and therefore ſhall not take advantage of her own wrong.

Donee ſtill Tenant after diſcontinuance.

Co. l. 3. 29. b. 4. in *Butler & Bakers* caſe. 14 *H.* 4. 38. 1 *H* 5. Tit. Grants, 43.

20. If Donee in tail make a Feoffment in fee, in this caſe, the Donee hath neither Jus in rei veritate, nor Jus ad rem: for by his own act he hath departed with all the eſtate that was in him; and yet after this the Donee may extinguiſh or diminiſh his rent by releaſe or confirmation made to him by the Donor, becauſe (as to the Donor) the Donee ſhall ſtill remaine Tenant, and of neceſſity for the rent the Donor ſhall avow upon the Donee, for he cannot avow upon the Diſcontinuee: becauſe then by his own ſhewing the Reverſion, to which the rent is incident, ſhould be deveſted out of him by the Feoffment, and by conſequent he could not then maintaine his Avowry for the rent: and therefore of neceſſity he ſhall avow upon the Donee, notwithſtanding he hath deveſted himſelfe of all his eſtate, for it is no reaſon, that the Feoffment, which is the Donees own act, and by which wrong is done, ſhould availe the Donee to bar the Donor of his rent; for then the Donee, that made the diſcontinuance, ſhould take advantage of his own wrong.

Eſcape of Priſoners.

Co. l. 3. 44. b. 2. in *Baytons* caſe. Co. l. 3. 52. a. 4. in *Rigeweyes* caſe.

21. If one in execution eſcape of his own wrong & be retaken, he ſhall not have an Audita Querela to diſcharge himſelfe of his Imprizonment: becauſe he ſhall not take advantage of his own wrong, and in ſuch caſe, it is lawfull for the Gaoler to retake him, in what place ſoever he finds him: And albeit the Priſoner in the purſuit be out of view (as the turn of a corner or the like) yet the Sheriff or Gaoler may retake him, and although it be in places without their Juriſdiction: but the Plaintiff may bring an Action againſt the Sheriff before he can retake him, and he ſhall be anſwerable for an eſcape, albeit the Sheriff retake him afterwards: Howbeit, the Sheriff may then juſtifie to retaine the Priſoner, untill he ſave him harmleſſe from the Plaintiffs Action, or may bring an Action of Treſpaſſe upon the caſe againſt him for the damages he ſhall ſuffer by the Plaintiffs Action: Alſo after the eſcape, if the Capias ad ſatisfaciendum be not returned and filed, it may be rendred againſt the Priſoner.

Acceptance of rent, no confirmation.

Co. l. 3. 64. a. 4. *Pennants* caſe.

22. A man leaſes his Land, upon condition that the Leſſee ſhall not aſſigne any part thereof, the condition is broken, and the Leſſor before notice of the aſſignment accepts the rent due after ſuch aſſignment: In this caſe, the condition being collaterall, the breaking thereof may be ſo ſecretly contrived, that it is not poſſible for the Leſſor to come to the knowledge thereof, and therefore notice in this caſe is materiall and iſſuable: for (otherwiſe) the Leſſee ſhould take advantage of his owne fraud: It is otherwiſe, if a Leaſe be made with condition of re-entry upon non-payment of the rent, for in ſuch caſe both parties may take notice thereof by the Indenture, and therefore by acceptance of the rent afterwards, the Leſſor diſpenſeth with the Condition, and confirmes the Leaſe.

Fine, no bar to the Lord.

Co. l. 3. 76. b. 2. *Fawkes* caſe.

23. A. poſſeſſed of divers parcells of Land within the Manor of S. for years, at will, and by copy, and alſo of others there in fee, deviſeth the whole to B. for life, and thereupon levies a Fine to B. &c. of ſo many acres as amount to the whole Land, continues poſſeſſion, and payes the rents to the Lord: In this caſe, albeit five yeares paſſe, yet the Lord is not barred: for it is unreaſonable to give the Leſſee benefit (in this caſe) of the Leſſors non-claime, when the fact and covin of the Leſſee is the cauſe of his non-claime, for a man ſhall not take advantage of his owne covin or wrong.

Deviſe not money.

Co. l. 4. 81. a. 4. Sir *Anthony Corbets* caſe.

24. A. deviſeth his Land to B. till eight hundred pounds be raiſed for the preferment of his Daughters, and dyes, C. his heire conceales the Will, enters, and dyes: In this caſe B. ſhall have allowance for the time,

time, that the Will was concealed, and ſhall hold the Land ſo much the longer, according to the time that the Will was ſo concealed, untill the eight hundred pounds may be raiſed, for it is againſt reaſon, that the heire ſhould enter upon the Land ſo much the ſooner, becauſe his concealment of the will was a wrong, and then he ſhould take advantage of his own wrong.

Waſte in a Colemine.

25. A. demiſeth a Cloſe to B. wherein there is a Colemine unopened, B. opens the Mine and aſſignes his terme to C. except all Mines, C. digs Coles out of the Mine, and A. brings an Action of waſte againſt C. in this A. ſhall recover locum vaſtatum, and the exception ſhall not excuſe it, for the opening of the Mine by B. was a tort, and (that being committed) if B. ſhould excuſe or avoid it by the exception, he ſhould thereby take advantage of his own wrong. Co. l. 5. 12. b. 3. in *Sanders* caſe.

26. If A. grants to B. one hundred loads of wood to be cut downe and taken by the aſſignment of A. If A. in convenient time after requeſt by B. do not aſſigne them, B. may take them himſelfe without any aſſignment, for the Grantor (in ſuch caſe) by his own act or default ſhall not derogate from his grant, nor take advantage by ſuch his neglect of non-aſſignment; there is the ſame Law of Eſtovers, &c. to be aſſigned by the Bayliff of a Mannor, &c. Co. l. 24. b. 4. in Sir *Thomas Palmers* caſe.

ncritor, *de bene*.

27. An Executor of his own wrong ſhall not retaine goods in his own hands to ſatisfie his proper debt, for then he ſhould take advantage of his own wrong, which the Law will not permit. Co. l. 5. 30. b. 3. in *Coulters* caſe.

ge not al-wed.

28. Regularly, in all reall actions at the Common Law, if the Tenant be within age, and in by deſcent, he ſhall have his age: Howbeit, if the Action be founded upon his owne wrong, as in Ceſſavit, upon his ceſſer: in ſuch caſe, he ſhall not have his age: For then he ſhould take advantage of his own tort. Co. l. 6. 4. b. 3. in *Markals* caſe.

ter Judge-ent the nd not va-l,

29. A. hath Judgement in an Action of debt upon an Obligation, the Defendant brings a Writ of Error, and hanging the Writ of Error, the Plaintiff brings a new Action of debt upon the ſame Obligation: but it was adjudged he could not; for, untill the Judgment be reverſed by Error, the Obligation remaines ſtaight, and if there be Error in the proceeding, that is the Plaintiffs fault, and he ſhall not take advantage of his own tort or default. Co. l. 6 45. b. 2. in *Higgens* caſe.

leaſe to a ynt-tenant.

30. A. and B. are Joynt-tenants for life, and Judgement is had againſt A. in debt, who releaſeth to B. and B. dyes: In this caſe, albeit the terme is expired, ſo as the Reverſioner may enter, yet the Land ſhall ſtand charged with the Judgement during the life of A. for (otherwiſe) A. ſhould take advantage of his own Act, and thereby avoid the debt and Judgment of the Creditor, who is a Stranger to the releaſe. Co. l. 6. 78. b. The Lord of *Abergavenies* caſe.

lion upon e caſe.

31. A. recovers againſt B. in the Common Pleas, and dyes, C. upon the Judgment in the name of H. outlawes B. in the Huſtings of London, die lunæ proximum poſt feſtum Simonis & Judæ, and thereupon B. is taken by a Capias Utlagatum in Norfolke, and there impriſoned, whereupon B. brings an Action upon the caſe againſt C. Quia malicioſe & deceptive machinatus eſt, *&c.* And in this caſe it was objected, that the Capias Utlagatum was erroneous, becauſe the Outlawry was therein recited to be proximum ante feſtum, *&c.* but that exception was not allowed, becauſe the error in the Writ, which the Defendant C. had tortiouſly purſued, ſhall give no advantage to himſelfe: but in as much as B. the Plaintiff was impriſoned and moleſted thereby, he had thereupon good cauſe of Action. Co. l. 7. 4. b. 2. in *Butwers* caſe.

heire not pt.

32. Where Lands were conveyed to Baron and Feme, and to the heires of the Baron, and the Baron gives them in tail, the Baron dyes, the Feme recovers the Land againſt the Donee by a Writ of Cui in vita, ſuppoſing Co. l. 8. 53. b. 3. in *Sims* his caſe. 18 E. 3. fo. 9.

supposing that she had the Land to her and her heires in fee, the Feme after the Recovery enfeoffs another and dyes, the Donee in tail dyes without issue, the issue of Baron and Feme brings a Formedon in Reverter against the Feoffee of the Feme; And (in this case) albeit the issue was heire to the Feme, and thereby estopt by the Recovery in the Cui in vita to say, that the Feme had a lesse estate then Fee-simple, yet the issue, who claimed the Reversion of the Land as heire to the Baron, shall not be bound by that Estoppel made by the Feme, although he was heire to her also; for then the Feme who had but an estate for life, might by her own act have barred the heire, that right had, and claimed as heire to his Father.

Ouster by Lessor.

C. l. 8. 76. a. 2. in the Lord *Staffords* case.

33. If a man make a Lease for years, upon Condition, that if the Lessor out him within the Terme, that he shall have fee, and the Lessor doth out him accordingly; in this case, albeit the interest of the terme is by such ouster turned to a right, yet the Lessee in such case shall have fee: for that such ouster is the act and tort of the Lessor himselfe, whereof he shall take no advantage.

Executors layes, &c.

Co. l. 8. 133. a. 4. *Turners* case.

34. In debt against an Executor, he pleads a Recovery against him in such a Court, which amounts to the whole in his hands: the Plaintiff replies, that the recoverer hath accepted composition, and that the Defendant delayes to accept a release, with purpose to defraud the Plaintiff: In this case, the deferring to accept the release is a tort, and against the duty of an Executor, and therefore cannot helpe him, for if any prejudice happen to him thereby, it is by his own tort and default, and therefore he shall not take any benefit thereby.

Resistance by Prisoner.

Co. l. 9. 68. b. 4. in *Mackallies* case.

35. Upon an arrest, if the party arrested submit himselfe peaceably thereunto, and gives the Serjeants or Bayliffs convenient leasure to acquaint him with their business, they ought upon demand to shew him their warrant, and to let him know the occasion thereof, as it was adjudged in the Countess of Rutlands case, in the 6. Rep. fo. 55. But if he make resistance, and obey not their warrant, they are not bound to shew it, nor, &c. and if then any of them be killed, it is murder: for the Prisoner shall not in such case take advantage of his own wrong.

Summons and severance.

Co. l. 10. 134. b. 2. in *Read* and *Redmans* case.

36. In reall Writs originall, if he that is summoned and severed dyes (which is the act of God) the Writ shall abate, but taking of Baron or entring into the Land by him that is summoned and severed (or where there is no summons and severance) shall not abate the Writ, but onely make it abateable, because these are the parties own acts, whereof they shall not take advantage.

Waste.

Co. l. 11. 81. b. 1 in *Lewes Bowles* case.

37. If a Tenant for life or years fell Timber Trees, or pull down the Houses, the Lessor shall have the Timber, for the Lessee cannot have them by his demise, but as things annexed to the soile: And therefore it is absurd in reason, that when by his own act and wrong he hath severed them from the Land, he should gaine a greater property in them, then he had by the demise.

Waste.

F. N. B. 59. k.

37. The Tenant may fell Trees to repaire the Houses: but if the Houses be fallen into decay by his default, if then he fell Trees to repaire them, it is waste, for he shall not usurp the power of felling Trees to amend the Houses, when the cause why they wanted repairing was by his own neglect.

Not weying Woad.

Pl. Co. 16. b. 4. in *Fogassaes* case.

38. In Fogassaes case in the Commentaries, the not weying of the Woad is referred to the Collector: And therefore the Collector shall not by his neglect take advantage in the Kings behalfe of the not weying thereof, and by that meanes cause Fogassa to forfeit the same.

Obligation to enjoy peaceably.

Dyer 30. 205. 28 H. 8. & Dyer 42. 9. &c. 30 H. 8.

39. The Condition of an Obligation was this, That the Obligor should surrender certaine Copyhold land, and also that he should suffer the Obligee and his heires peaceably to enjoy the Land without the interruption

ſtruction of any: The Defendant pleads performance, and alſo that the Plaintiff did peaceably continue the Poſſeſſion thereof according to the condition for a certaine time, and that afterwards the Lord for rent arrears in the Plaintiffs time entred according to the cuſtome for the forfeiture, Judgement if action, and this was held a good Plea, becauſe the reaſon why the Plaintiff did not enjoy the Land was cauſed by his own act, which in this caſe ſhall not worke to his advantage: So if the Obligee had been Tenant at the Common Law, and had ceaſed, the Obligation had been ſaved, for that it was the act of the Plaintiff himſelfe.

148 And therefore the Law of it ſelf prejudiceth none.

Diſtreſſe.

1. Any goods may be diſtrained for damage-feaſant, by reaſon of the neceſſity (See Max. 110. Ex. 4.) and ſuch Diſtreſſe may alſo be made in the night time, for the ſame reaſon (Vide M. 128. E. 2.) Howbeit for rent, nothing can be diſtrained in the night time, or which cannot be rendred in as good plight, as it was in at the time of the Diſtreſſe taken, as ſheaves or ſhocks of Corne, or the like, cannot be diſtrained for rent, becauſe when a Diſtreſſe is made for rent it is in the cuſtody of the Law, and repliviable, and during the time it ſo remains, the Law will not ſuffer the owner thereof to ſuffer prejudice by the detainer, and (in ſuch caſe) there is no ſuch neceſſity, but that the Diſtreſſe may be made in a ſeaſonable time, and of convenient goods: Howbeit Wagons or Carts loaden with graine (Horſes and all) may be diſtrained for rent, becauſe they may be reſtored in the ſame condition they were in, when they were taken: And yet Beaſts belonging to the Plough (averria caruce) ſhall not be diſtrained, nor any Vtenſils or Inſtruments of a mans Trade or Profeſſion, as the Axe of the Carpenter, the Books of a Scholler, &c. while other Beaſts or Goods (which Bracton calls animalia, or catalla otioſa) may be diſtrained, for that were uncharitable and an injury to the publique, whereof the Law (if poſſibly it may be otherwiſe) will not be guilty. Vide plus ubi ſupra. Co. Inſt. part 1. 47. a. 4

Waſte againſt Guardian.

2. If the Guardian doth waſte, and the heire within age brings an Action of waſte, the Guardian ſhall loſe the Wardſhip, but if the heire bring an Action of waſte at his full age, he ſhall then recover treble damages, for when the Law at his age of one and twenty years takes away from him his advantage of having the Forfeiture of the Wardſhip, in lieu thereof it gives him treble damages, becauſe (otherwiſe) the Guardian might do him an injury, and make him no recompence for it, for then the Guardian cannot loſe the Wardſhip. Co. ibid. 54. a. 2.

In Infant eyes releif.

3. Littleton ſaith, That the heire of a Tenant by Knight-ſervice ought not to pay releife untill his age of twenty one years, yet in ſome caſe the Heire ſhall pay releif, when he was within that age at the time of the death of his Anceſtor: As if a man holdeth Lands of the King by Knight-ſervice in Capite, and of a common perſon other Lands by Knight-ſervice, and dyeth, his heire being within age; here, the King hath the Wardſhip both of body and Lands by his Prerogative, untill the full age of the heire, and therefore (in this caſe) the Heire (though he be within age) ſhall immediately pay releif to the other Lord: for as the Law giveth away the Wardſhip to the King by reaſon of his Prerogative, ſo doth it in reſpect thereof reſerve to the other Lord all that conveniently may be reſerved, viz. his releif. Litt. S. 112. Co. ibid. 83. b. 4.

The Lord ſhall not have the body.

4. A man ſeiſed of Land holden by Knight-ſervice hath iſſue a Daughter, who takes Baron, and hath iſſue a Son, the Tenant dyes and Litt. S. 114. Co. ibid. 84. a. 3.

and also the Mother; in this case, the Son shall not be in ward for his body living his Father, but yet the Lord shall have the Wardship of the Land untill the full age of the Son; for albeit (in this case) the Law doth give the custody of the body to the Father and barreth the Lord thereof, yet the Lord shall have the Wardship of the Land by force of the tenure of the first creation thereof: So it is also if the Father marry his heire within age and dyeth, in this case also the Lord shall have the Wardship of the Land.

Co. ibid. 88. b. 3. 5. Where the Father is Guardian of his Son for Land holden in Knight-service, this is in respect of his paternall naturall custody, and therefore in such case he shall not be answerable for his marryage or custody of his Lands; but where the Father is Guardian by reason of a tenure in Socage, he must by Law be accountable to the Son both for his marriage and also for the profits of his Lands, which he should not be, if he had the custody of his eldest son (in this case) as his Father in respect of nature; And because the Law doth appoint him to be Guardian in Socage, it compels him also to be accountable: for the act of Law doth never any man wrong. Father Guardian in socage accountable.

Co. ibid. 134. b. 2. *Artic. super carta, cap.* 15. 28. E. 1. 6. Before the Statute of Articuli super cartas, in all Summons and Attachments in Plea of Land were contained the terme of fifteen dayes, and it appeareth not onely by that Statute, but likewise by the ancient Authors of the Law, who wrote before that Statute, that this was the ancient common Law: And the reason of giving so many dayes in reall Actions, was (the Recovery being so dangerous) that the Tenant might the better provide himself both of answers and proofes. In reall actions fifteen dayes remain.

Co. ibid. 132. b. 2. 7. If I be disseised, and my Brother release with Warranty, and is afterwards profest in Religion, and thereby the Warranty descend upon me: In this case, albeit the Law binds me by the Warranty, yet (I being his heire) the Law gives me by descent such Inheritance as my Brother had at the time of his Profession. Descent upon Profession.

Co. ibid. 137. a. 3. Litt. S. 203. 8. Albeit by an act in Law a man may have damnum, yet (in such case) it is alwayes absque injuria, as if a Ward enter into Religion and be profest, hereby the Lord loseth the Wardship of the Land, which may be said damnum: for by such Profession the Ward is civiliter mortuus, a dead man in the Law, and cannot hold any Inheritance, neither can the Guardian continue the Wardship of the land, because by the civill death of the Ward, the Inheritance is descended to another, but this damnum is absque injuria, for by such Profession the land descends to another, who is either to be in Ward, or to pay releif: And therefore (in such case) the law giveth the Guardian no remedy, neither by any formed Writ, nor by Action upon the case. Profession discharges wardship.

Co Inst. pars 1. 138. a. 3. 9 If Tenant for another mans life by his Deed grant a Rent-charge to one for twenty one years, Cesty que vie dyeth, hereby the Rent-charge is determined, and yet the Grantee may have during the years a Writ of Annuity for the arrearages incurred after the death of Cesty que vie, because the Rent-charge did determine by the act of God and the course of law, Actus Legis nemini facit injuriam: So it is also, if land, out of which a Rent-charge is granted, be recovered by an eyent title, and thereby the Rent-charge is avoyded, yet the Grantee shall have a Writ of Annuity, because the Rent-charge is avoyded by the course of law, and so it was holden in Wards case, cited in Co. l. 2. fo. 36. in Heywards case, against an opinion obiter in 6 H. 6. 42. 2. Vide Max. 114. Ex. 13. A annuity good, the land evicted.

Co. ibid. 149. a. 1. 10. A. hath common of Pasture sans number in twenty Acres of land, and ten of these Acres descend to A. the common sans number is intire and uncertaine, and cannot be apportioned, but shall remaine, but if it had been a Common certaine (as for ten Beasts) in that case the Common Common *sans number* not apportioned.

common

dition ſhall be appoꝛtioned; And ſo it is alſo of common of Eſtoꝛers, Turbary, Piſcary, &c. And it is to be obſerved, that in none of theſe caſes, oꝛ the like, the deſcent, which is an act in Law, ſhall woꝛke any wꝛong to the Ter-tenant; foꝛ (nevertheleſſe) he ſhall have thereby that which belongeth to him; foꝛ the Act in Law ſhall never woꝛke any wꝛong.

The like. 11. Of Common oꝛ Coꝛody certaine (as foꝛ ten beaſts, ſo many diſhes in certaine, &c.) partition amongſt Coparceners oꝛ Appoꝛtionment may be made; foꝛ this can woꝛke no wꝛong to the Ter-tenant: But if a man have reaſonable Eſtovers (as Houſe-boot, Hay-boot, &c.) Appendant to his Free-hold, they are ſo intire that they ſhall not be divided amongſt Coparceners; ſo likewiſe if a Coꝛody uncertaine be gꝛanted to a man and his heirs, and he hath iſſue diverſe Daughters, this Coꝛody ſhall not be divided between them; there is the ſame Law alſo of Common ſans number: foꝛ (in theſe caſes and the like) if Eſtoꝛers, Common, Piſcary, oꝛ Coꝛody uncertaine ſhould be partable amongſt Sifters, ſuch partition would woꝛke a wꝛong to the Ter-tenant, who ſhould be oppꝛeſſ and ouer-charged thereby, which the Law will not ſuffer: But in ſuch caſes one of the Coparceners hath it, and the reſt are ſatisfied otherwiſe, oꝛ if there be nothing but ſuch intire Inheritances, that will not admit ſeverance, then they are to have the pꝛofit thereof by turnes, &c. vide pl. ibid. Co. ibid. 164. b. 4. Co. ibid. 165. a. 1.

Warranty continues after partition. 12. If two hold joyntly certaine Lands with warranty, and make partition, in this caſe the Warranty is gone; becauſe they are not compellable by the Common Law to make partition: but if Coparceners hold Land with Warranty, and make partition, yet ſhall the Warranty ſtill remaine; foꝛ they are compellable by the Common Law to make partition, and thereforꝛe the Law preſerves their Warranty. Co. ibid. 165. a. 4.

The eſtate reſerved by conſtruction of Law. 13. If Tenant foꝛ life make a Leaſe generally, this ſhall be taken (by conſtruction of Law) to be an eſtate foꝛ his owne life, that made the Leaſe; foꝛ if it ſhould be a Leaſe foꝛ the life of the Leſſee, it would woꝛk a wꝛong to him in the Reverſion: So it is likewiſe, if Tenant in tail make a Leaſe generally, the Law ſhall contrive this to be ſuch a Leaſe as he may lawfully make, and that is foꝛ terme of his owne life, foꝛ if it ſhould be foꝛ the life of the Leſſee, it would be a Diſcontinuance, and (conſequently) the eſtate which ſhould paſſe by conſtruction of Law ſhould woꝛke a wꝛong, which the Law will not permit; becauſe, Legis Conſtructio nunquam facit injuriam. Co. ibid. 183. a. 4.

Deſcent tels hiſtory. 14. In caſe of a Deſcent caſt, there is a Diverſity betwixt coꝛpoꝛall Inheritances, as Houſes, Land, &c. which do lye in Livery, and Inheritances incoꝛpoꝛall, as Advowſons, Rents, Commons, &c. which lye in Gꝛant, foꝛ a Deſcent caſt of theſe ſhall not put the Diſſeiſee to his Action, but he may claim them notwithſtanding ſuch Deſcent: Howbeit a Deſcent caſt of the other puts the Diſſeiſee to his Action: becauſe Houſes ſeꝛve foꝛ the habitation of men, and Land to be manured foꝛ their ſuſtenance; and thereforꝛe an heire ſhall not after a Deſcent of them be moleſted oꝛ diſturbed in them by Entry. Co. ibid. 237. b. 4.

Continuall claime. 15. If a man foꝛ feare of Battery, mayhem, oꝛ death, dare not go to the Land to make his Entry, the Law (to pꝛevent danger) gives him leave (in ſuch caſe) to go as neare the Land as he dare, although he be not within the view thereof. Co. ibid. 254. a. 4. Litt. S. 421.

Feme Obligee and Executrix. 16. If a Feme Obligee take the Obligoꝛ to Huſband, this is a releaſe in Law, the like Law is if there be two Femes obliques, and the one take the Obligoꝛ to Huſband, this is alſo a releaſe in Law of the whole debt: But if a Feme Executrix take the Debtoꝛ to Huſband, this is no releaſe in Law; foꝛ that ſhould be a wꝛong to the dead, and in Law woꝛke Co. ibid. 264. b. 4.

make a Deviſavit, which an act in Law ſhall never make; And ſo it was adjudged in the Kings Bench, M. 30, & 31 Eliz.

Co. Inſt. pars 1. 169. b. 3. 17. Where be Lord and Tenant, and the rent is behind by divers years, and the Tenant make a Feoffment in fee, if the Lord accept the ſervice or rent of the Feoffee due in his time, he ſhall loſe the arrearages due in the time of the Feoffor; for after ſuch acceptance he ſhall not avow upon the Feoffor, nor upon the Feoffee for the arrearages incurred in the time of the Feoffor: But in that caſe if the Feoffor dye, albeit the Lord accept the rent or ſervice by the hand of the Feoffee due in his time, he ſhall not loſe the arrearages; for now the Law compelleth him to avow upon the Feoffee, and that which the Law compelleth him unto ſhall no way prejudice him: So if there be Lord, Meine, and Tenant, and the rent due by the Meine is behind, and after the Tenant forejudge the Meine, and the Lord receive the ſervices of the Meine, which iſſue out of the Tenancy, he ſhall not be barred of the arrearages, which iſſued out of the Meinalty; ſo likewiſe if the rent be behind and the Tenant dye, the acceptance of the ſervices by the hand of the heir ſhall not bar him of the arrearages, cauſa qua ſupra; for in all theſe caſes, albeit the perſons be altered, yet the Lord doth accept the ſervices of him, who only ought to do them, which being cauſed by act in Law, it will not ſuffer him to be prejudiced thereby. Lord and Tenant. Lord, Meine and Tenant.

Co. ibid. 285. a. 5. 18. If Tenant, pur anter vie, bring an Aſſize, and Ceſtuy que vie dyeth, hanging the Writ, here albeit the Writ were well commenced, yet the Writ ſhall abate becauſe no Aſſize can be maintainable for damages only: but where an Action is begun, and part of the Action determineth by Act in Law, and yet the like Action for the reſidue is given, there the Writ ſhall not abate but proceed; As if an Action of Waſte be brought againſt Tenant per anter vie, and hanging the Writ Ceſtuy que vie dyeth, the Writ ſhall not abate, but the Plaintiff ſhall recover damages, becauſe if Ceſtuy que vie had dyed before any Action brought, the Lord might have had an Action of Waſte for the damages, and the Act in Law ſhall not prejudice him: So in an Ejectione firme, if the terme incur, hanging the Action, yet ſhall the Action proceed for damages, becauſe an Ejectione lyeth after the terme for damages, which he ſhall recover, notwithſtanding the terme be by Law determined. If a Conſpiracy be brought againſt two, and one of them dye, hanging the Writ, nevertheleſſe it ſhall proceed. Aſſiſe. Ejectione firme.

Co. ibid. a. 4.

Co. ibid. 309. a. 1. 19. Albeit a man may by the Law grant away a Seignory, Rent, Reverſion, Remainder, &c. yet ſuch Grant ſhall not be good without Attornement; that is, the conſent of the preſent Tenant of the Land, for which the old Books render this reaſon, Si dominus attonnare poſſit ſervitium tenentis contra voluntatem tenentis, tale ſequeretur inconveniens, quod poſſit eum ſubjugare capitali inimico ſuo, & per quod teneretur ſacramentum fidelitatis facere ei, qui ei damnificare intenderet. Attornment.

Co. ibid. 327. a. 2. 20. When Tenant in tail makes Feoffment, or, &c. the Entry of the Donor, who hath the Reverſion, and alſo of him in Remainder is taken away, and they are put to their Action, viz. A Formedon in Reverter for the one, and in Remainder for the other; And the reaſon, why theſe alienations in theſe ſeverall caſes do make a diſcontinuance, and put him in Reverſion or Remainder that right had to his Action, and take away his Entry is, to the end that every mans right may be preſerved, viz. to the Demandant his ancient right, & to the Feoffee or Purchaſor the benefit of his Warranty, which courſe is founded upon great reaſon and equity, for the benefit of Warranty would be prevented and avoyded if the Entry of him that right had were lawfull, hereby alſo the danger that many times happeneth by taking of Poſſeſſions is warily prevented by Law. Entry taken away.

21. If

rant of the ext avoy-ance.

21. If a man ſeiſed of an Advowſon in fee by his Deed graunteth the next preſentation to A. and before the Church becometh void, by another Deed grants the next preſentation of the ſame Church to B. the ſecond Grant is void; for A. had the ſame granted to him before, and the Grantee ſhall not have the ſecond avoydance by conſtruction, to have the next avoydance, which the Grantor might lawfully grant; becauſe the Grant of the next avoydance doth not import the ſecond preſentation: but if a man ſeiſed of an Advowſon in fee, take wife, now by act in Law is the wife intitled to the third Preſentation, if the Husband dye before her; And in this caſe, if the Husband grant the third Preſentation to another and dye, the heire ſhall preſent twice, the Wife ſhall have the third Preſentation, and the Grantee the fourth; for in this caſe it ſhall be taken the third Preſentation, which he might lawfully grant: And ſo note a diverſity between a title by act in Law, and by act of the party, for the act in Law ſhall work no prejudice to the Grantee. Co. ibid. 378. b. 4.

arranty.

22. If a man doth warrant Land to another without this word (Heires) his heires ſhall not vouch; And (regularly) if he warrant Land to a man and his heires without naming aſſignes, his Aſſignee ſhall not vouch: but if the Father be enfeoffed with warranty to him and his heires, the Father enfeoffeth his eldeſt ſon with warranty and dyeth, the Law giveth to the ſon advantage of the warranty made to his Father; becauſe by act in Law the warranty betwixt the Father and the ſon is extinct, which act in Law ſhall not prejudice him. Co. ibid. 384. b. 4.

ſignment of ower.

23. An Aſſignment of Dower by a Diſſeiſor, Abator, Intruder, &c. if there be no covin, is good, unleſſe where it is prejudiciall to the Diſſeiſee, &c. As if the Husband enfeoff the younger ſon with warranty and dyeth, the eldeſt diſſeiſeth the younger ſon, and endowes the widow; In this caſe, the younger ſon ſhall avoid this Aſſignment, for otherwiſe he ſhall loſe his warranty: But a Diſſeiſor, Abator, Intruder, &c. cannot aſſigne a rent out of the Land to her for her Dower, to bind the Diſſeiſee, &c. Co. ibid. 35. a. 3.

24. Vide 33. 5.

ſagreement uſt be in eſence.

25. The Law gives favour to an agreement, which tends to the advantage of the party, for that may be done in his abſence, as well as in his preſence; but ſo it is not of a diſagreement, for that ought to be done in his preſence, becauſe the Law conceives the party intereſted may uſe perſwaſions to the other party; and ſo induce him to agree; ſo Attornement is good, though the Grantee be abſent. Co. l. 2. 69. a. 1. in *Tookers* caſe.

ardſhip.

26. If there be Tenant for life, the Remainder in fee of Land holden by Knight-ſervice, and the Lord grants his Seigniory for life, and after he in the Remainder in fee dyes, his heir within age, and after the Grantee for life of the Seigniory dyes, and then the Tenant for life dyes, he in Reverſion of the Seigniory ſhall have the Ward: So likewiſe, if he in the Remainder dye, his heire within age, ut ſupra, and after the Lord dye, and then the Tenant for life dyes, the heire of the Lord in this caſe ſhall have the Ward; for the act in Law ſhall not prejudice any, and his Executor cannot have it, becauſe it was not a Chattell veſted in the Teſtator. Co. l. 2. 93. b. 2. in *Bingham's* caſe. Co. l. 3. 65. b. 3. in *Penants* caſe.

ceptance of nt. Bar, & ſa.

27. If a man having Rent-ſervice or Rent-charge, accept the Rent due at the laſt day, and thereof make an acquittance, thereby all the arrearages due before are diſcharged, as it was adjudged in Hopkins and Mortons caſe, Hill. Rot. 950. in C. B. Vide 10. Eliz. 271. Dyer, but if a man make a Leaſe for life rendring Rent, or if there be Lord and Tenant by Fealty and Rent, and the Rent is arreare by 2. years, and after the Leſſor or Lord diſſeiſe the Ter-tenant, and then the Tenant recovers in an Aſſize and the rent which incurred, is recouped in damages, yet the Lord or Leſſor ſhall recover in Aſſize the arrearages incurred before the Diſſeiſin, and the bar of the laſt years rent ſhall not be a bar of the former arrearages.

Ibid. b. 4. 28. If there be Lord and Tenant, and the Rent is arreare, and the Tenant makes Feoffment in fee; In this caſe, if the Lord accept the Rent or ſervice of the Feoffee, he ſhall loſe the arrearages in the time of the Feoffor, albeit he made him no acquittance; for after ſuch acceptance he ſhall not avow upon the Feoffor at all, nor yet upon the Feoffee, ſave onely for the ſervices, which incurred in his time, as appears in 4 E. 3. 22. 7 E. 3. 8. 7 E. 4. 27. 28 H. 8. Br. Avowry 111. Notwithſtanding, In ſuch caſe, if the Feoffor dye, although the Lord accept the Rent or Service by the hand of the Feoffee, yet ſhall he not loſe the arrearages; for now the Lord can avow upon none but the Feoffee, and that whereunto the Law compells a man ſhall never prejudice him: So if there be Lord, Peſne, and Tenant, and the Rent due by the Peſne is arreare, and after the Tenant forejudges the Peſne, and the Lord receives the Services of the Peſne, which now iſſue immediately out of the Tenancy, yet ſhall he not be barred of the arrearages, which iſſue out of the Peſnalty: likewiſe, if the Rent be arreare, and the Tenant dye, the acceptance of the Services by the hand of the Heire ſhall not bar him of the arrearages, cauſa qua ſupra: For in all theſe caſes, albeit the perſon be altered, yet the Lord accepts the Rent and Services of him, who onely ought by the Law to doe them: Vide 4 E. 3. 22. 7 E. 3. 4. 7 E. 4. 27. 9 H. 8. Br. Avowry 111. before cited. Neither ſhall acceptance of Rent bar a releiſe, becauſe that is as a bloſſome fallen from the Tree, and a fruit or improvement of the Services. Idem.

Co. l. 3. 72. b. 2. in *Webbies* caſe. 29. If a Sheriff dye, and before another is made, one in execution breaks the Goale and goes at large, this is no eſcape, for when a Sheriff dyes, all the Priſoners are in the cuſtody of the Law, untill a new Sheriff be made, and albeit they in the interim flie out of the walls of the Goale, yet the Law hath the cuſtody of them, and preſerves them in execution without any freſh Suit, in what place ſoever they be; and therefore they may (in ſuch caſe) be againe taken in execution at any time after: for no eſcape can happen in prejudice of the party, but when ſome body may be charged therewith, and the Law deceives none. Eſcape.

Co. l. 6. 12. a. *Morrices* caſe. 30. If ſince the Statute of 31 H. 8. 1. Joynt-tenants make partition with conſent by Deed, the Warranty annexed to their eſtate is gone: but if they ſue a Writ of Partition according to that Act, they may vouch as before, and ſuch partition will not prejudice them, being founded upon a Statute Law, whereunto all perſons give conſent: So if there be two Joynt-tenants with Warranty, and the one diſſeiſeth the other, and the Diſſeiſee brings an Aſſize; In this caſe, it ſeems to be the better opinion, that the Diſſeiſee ſhall not recover in ſeveralty, but generally, neither is the Warranty gone by ſuch Recovery, as it was adjudged in 28 lib. Aſſ. Pl. 35. becauſe the Recovery is an Act in Law, which prejudiceth none; albeit ſome Books are againſt it, as 10 E. 3. 40. & 10. lib. Aſſ. 17. Writ of partition.

Co. l. 6. 27. b. 4. Viſcount *Montagues* caſe. 31. Viſcount Montague with licence of the Queen ſuffers a Recovery to B. and D. to uſes, with power of revocation and limitation of other uſes, he revoks and limits new uſes, in this caſe, no Fine ſhall be paid to the Queen for alienation: For when licence is granted to alien to A. and the alienation is to the uſe of B. here, no Fine is to be paid for the alienation to the uſe of B. becauſe the uſe is executed by the Statute of 27 H. 8. which can wrong no man. No Fine for alienation. Stat. 27 H. 8.

Co. l. 9. 106. b. 2 *Margaret Podgers* caſe. 32. P. Copy-holder for life, Remainder for life, the Lord bargains and ſels, and levies a Fine with Proclamations to P. five yeares paſſe without any claime by thoſe in Remainder, yet are they not barred: becauſe P. the Bargainee was in by force of the Statute of 27 H. 8. upon a bargaine and ſale by Deed indented and inrolled, and an act of Parliament can never do wrong. See there alſo the Lady Greſhams caſe, where an An act of Parliament doth no wrong.

Act of Parliament excuſed a Fine for alienation of Land in Capite without licence, upon the ſame reaſon.

The like.

33. Where a Feoffment was made to Feoffees to the uſe of another before the Statute of 27 H. 8. of uſes, and then that Statute was made, which transfers the Poſſeſſion to Ceſtuy que uſe: In this caſe, the gift paſſes from the Feoffees to Ceſtuy que uſe by the Parliament, becauſe the conſent of the Feoffees is involved in that Act of Parliament, and it cannot be ſaid, that the Parliament gave it to Ceſtuy que uſe: for if it ſhould be ſaid the gift of another then of the Feoffees, then ſhould the Parliament do the Feoffees wrong in taking a thing from them, and making another the Donor thereof, which an Act of Parliament cannot do; See there alſo the Rector of Edingtons caſe, 19 H. 6. 62. Fitz. Grant 10. & Br. 40. & Parl. 88. to the like purpoſe. *Plow. 59. a. 2. in Wimbiſh and Talboies caſe.*

Stat. W. 2. c. 39. Raviſhment of Gard.

34. A woman covert is not within the Statute of Weſt. 2. cap. 39. Concerning raviſhment of Ward, for part of the words are, Si hæredem poſt annos nubiles maritaverit, & de maritagio ſatisfacere non potuerit, abjuret regnum, vel habeat priſonam imperpetuum, &c. for a Feme covert being by Law diſabled to ſatisfie, ſhe ſhall not be by Law puniſhed with baniſhment or perpetuall impriſonment, and the Husband being innocent ought not to be puniſhed, becauſe the puniſhment is perſonall, Vide pl. ibid. & infra Max. 156. Co. l. 9. 73. a. 1. in Doctor Huſſeys caſe.

Freky.

35. Where an Abbot (holding in Frankalmoigne) together with his Covent, aliens the Land to a ſecular man, he cannot hold as they held, viz. in Frankalmoigne, and (of neceſſity) he muſt hold of ſome body, and by ſome ſervice, for that the Law will enjoyne him to do, to avoid the inconvenience of holding of none: And therefore in regard the Law is (in this caſe) to create him a new tenure, it ſhall be the loweſt (viz. in Socage) and with the leaſt ſervice that can be done, and neareſt to the freedome of the former ſervice. Vide 84. 4. Co. Inſt. part 1. 98. a. 3.

Parol, demur. non-age.

36. In a Writ of Meſne the Parol ſhall not demur for the non-age of the Plaintiff, becauſe it is not reaſon, that the Infant ſhould be diſtrained for the ſervices of the Meſne during his non-age, and yet he to have no remedy untill his full age, but in regard his non-age ſhall not priviledge him from the payment of the Rent during his non-age, the Law will alſo give him remedy during that time. Co. l. 9. 85. a. 4. in Cawdies caſe.

149. Eſpecially for things that cannot be imputed to their own folly, or neglect. *Vide M. 156. Ex. 9.*

Tenant by the curteſie. Things that lye in Grant.

1. Tenant by the Curteſie ſhall have after his Wives death a Rent, or Advowſon, albeit the Rent day was not then come, nor the Church then void, and (by conſequent) he not actually ſeiſed thereof before his Wives death, becauſe there was no Laches or default in him nor poſſibility to get Seiſin, and therefore the Law in reſpect of the iſſue begotten by him, will give him an eſtate by the curteſie of England therein, albeit he was not thereof actually ſeiſed as aforeſaid: It is otherwiſe, where he hath (in right of his Wife) title of Entry into Lands, and in her life neglects it, for that is imputed to his own laches and folly: Neither ſhall a man be Tenant by the curteſie of a bare right, title, uſe, or of a Reverſion or Remainder expectant upon an eſtate of Free-hold, unleſſe the particular eſtate be determined or ended during the Coverture. Co. Inſt. pars 1. 15. b. 2. & Co. ibid. 29. a.

Curteſie. Dower.

2. A man ſhall not be Tenant by the Curteſie of a Seiſin in Law without Entry, but he ought to be actually ſeiſed in the life of his Wife: Howbeit, a woman ſhall be endowed of a Seiſin in Law, as where Lands or Tenements deſcend to the Husband, here before Entry Co. ibid. 31. a. 3.

he

he hath but a Seiſin in Law, and yet the Wife ſhall be endowed ther. of, albeit it be not reduced to an actuall Poſſeſſion, for it lyeth not in the power of the Wife to bring it into an actuall Seiſin, as the Husband may do of the Wives Land, when he is to be Tenant by Courteſie.

Co. ibid. 47. b. 1. 3. When Cattell are diſtrained they are to be put in a pound overt, or open, within three miles, in the ſame County, as into a pinfold made for ſuch purpoſes, or in his own cloſe, or the cloſe of another by his conſent; to the end the owner may give his Cattell meat and drink without Treſpaſſe to any other, and then if the Cattell miſcarry, he that diſtrains them is excuſed, for it cannot be imputed to any neglect of his, the Owner (in ſuch caſe) being bound to ſuſtain them at his perill: but if the Cattell be put into a pound covert or cloſe, as in a houſe, where the Owner cannot come at them; in ſuch caſe, they are to be ſuſtained with meat and drink at the perill of him that diſtraines, and he ſhall have no recompence for the charge of keeping them, and if any of them miſcarry he ſhall make them good; for in this caſe it cannot be imputed to the folly or neglect of the Owner, if they be worſe or miſcarry, becauſe he could not come at them to ſuſtaine them. Diſtreſſe.

Co. ibid. 53. a. a. & 3. 4. It is permiſſive waſte in the Tenant to ſuffer the houſe to be uncovered, whereby the Sparrs or Rafters, Planches, or other Timber of the Houſe become rotten: Howbeit, if the Houſe be uncovered, when the Tenant cometh in, it is no waſte in the Tenant, to ſuffer the ſame to fall downe; for in ſuch caſe it cannot be imputed to his neglect but the Owners: So likewiſe, if a wall be uncovered, when the Tenant comes in, it is no waſte, though he ſuffer it to decay: Alſo if the houſe fall down by tempeſt, or be burnt by lightning, or proſtrated by enemies, or the like, without any default in the Tenant, or be ruinous at his coming in and fall downe; this is not waſte in the Tenant; but he may build the ſame againe with ſuch materialls as remaine, and with other Timber, which he may take growing upon the ground, for his habitation; but he muſt not make the houſe longer then it was. Waſte.

Co. ibid. 53. b. 1. 5. It is waſte to ſuffer a Wall of the Sea to be in decay, ſo as by flowing and re-flowing of the Sea, the Meadow or Marſh is ſurrounded, whereby the ſame becomes unprofitable; howbeit, if it be ſurrounded ſuddenly by the rage and violence of the Sea, occaſioned by wind, tempeſt or the like, without any default of the Tenant, this is no waſte puniſhable, becauſe it cannot be imputed to the Tenants neglect or default in that caſe: According to Fletaes rule, Fortuna, ignis, & hujuſmodi eventus inopinati omnes tenentes excuſant. Waſte.

l.l. 1. c. 111.

Co. ibid. 55. a. 4 &c. 6. Tenant at will ſhall reape the crop which he ſowed in peace before his Leſſor determined his will, whether it be graine, hempe, flax, or any other annuall profit; for it cannot be imputed to his folly, that he knew not his Leſſors intention, that he would determine his will before they might be ripe; there is the ſame Law and reaſon of Tenant by the courteſie, in Dower, for life, pur anter vie, or any other uncertaine eſtate, viz. when the terme will determine; and if ſuch Tenant happen to dye, his Executors, &c. ſhall enjoy the crop: If Tenant by Statute Merchant ſow the ground, and then a ſudden and caſuall profit falleth, by which he is ſatisfied, yet ſhall he have the embleaments, cauſa qua ſupra. And in all theſe caſes, it is not materiall whether the graine, &c. be not ripe, or dead ripe, ready to be cut; for by the ſame reaſon they may be taken, though they be not ripe, they may alſo be taken when ripe: Albeit Littleton ſaith, Apres Iembleer & devant que les blees ſant matures. Tenant at will: particular eſtates. Graine, &c. ſowne.

Co. ibid. b. 3.

Co. ibid. b. 4.

Co. ibid. 55. b. 4. 7. Where there is Leſſor and Leſſee at will, the Leſſor may by actuall Entry in to the ground determine his will in the abſence of the Leſſee, but Tenant at will, &c. no- tice requiſite

but by words spoken from the ground the will is not determined, untill the Lessee have notice: no more then the discharge of a Factor, Attorney, or such like in their absence is sufficient in Law, untill they have notice thereof.

raine sowne. ferme uncertaine.

8. If Lessee for years, that knoweth the end of his terme, soweth the Land, if the terme determine before he can cut them, the Lessor shall have them; because the end of his terme was certaine, and it was his folly to sow them, when he might know beforehand, that he could not Inn them in due season: Howbeit, where a Lease for years depends upon an uncertainty, as upon death of Tenant for life being made by him, or of a Husband seised in right of his wife, or the like, there it is otherwise. Co. ibid. 56. b. 4.

lying seised, wardship.

9. If there be Lord and Tenant, and the Tenant maketh a Feoffment in fee upon Condition, and the Feoffor dyeth, after his death the Condition is broken, the Heire within age entreth for the Condition broken, in this case the heire shall be in Ward, and yet the Tenant dyed not seised of the Land, neither had he any estate or right in the Land at the time of his death, but onely a Condition, and which was broken after his death: Nevertheless, because here is no default in the Lord to bar him of his Wardship, and the Condition reflecteth the Tenants the Land in nature of a descent (for, he shall be in by descent) therefore shall the heire, in this case, be in Ward. Vide pl. ibid. Co. ibid. 78. b. 1.

Guardian in Socage, robbed. Discharged.

10. If a Guardian in Socage having received the rents & profits of the Lands of the Minor, happen to be robbed of the same without his default or negligence, he shall be discharged thereof upon his account; so also shall a Bayliff of a Manor, a Receiver, a Factor of a Merchant, or the like: It is otherwise of a Carrier, for he by taking his hire doth thereby implicitly undertake the delivery of the goods delivered unto him: So it is likewise, if goods be delivered to a man to be kept or to be safely kept (which is all one in Law) and after those goods are stollen from him, this shall not excuse him; for by the acceptance he undertook to keep them safely, and therefore he must keep them at his perill: But if the goods be delivered unto him to be kept as he would keep his owne, there if they be stollen from him without his default or negligence, he shall be discharged: as if goods be delivered to one as a gage or pledge, and they be stollen, he shall be discharged; because he hath a property in them, and therefore he ought to keep them no otherwise then his owne; but if he that gaged them tendred the money before the stealing, and the other refused to deliver them, then for this default in him he shall be charged. Co. ibid. 89. a. 3. 4.

he like.

11. If A. leave a Chest locked with B. to be kept, and taketh away the key with him, and acquainteth not B. what is in the Chest, and the Chest, together with the goods of B. are stollen away, B. shall not be charged therewith; because A. did not trust B. with them, as this case is, neither were they left by the default or negligence of A. And in all such cases, what is said of stealing is also to be understood of Shipwrack by Sea, fire by lightning, and other like enevitable accidents. And therefore when a man receives anothers goods to keep, it is good to receive them with this caution, To keep them as his owne, or at the perill of the Owner. Co. ibid. a. 4. *Pasch.* 43. *El. inter Southcote* and *Bennet* in detinue.

ouchee.

12. If upon a sequatur sub suo periculo, the Sheriff returne, that the Vouchee hath nothing, albeit the Demandant shall have Judgement against the Tenant, yet he shall not have Judgement to recover in value, because the Vouchee was not warned. Co. ibid. 101. b. 4.

ondition, ender.

13. If a man be bound to pay twenty pounds at any time during his life at a place certaine, and the Obligor tenders the money at the place without giving notice to the Obligee, this is no good tender: So it is also Co. ibid. 111. a. 2.

alſo where a man makes a Feoffment in fee upon Condition, that if the Feoffor pay twenty pounds to the Feoffee at a place certaine at any time during his life, that then, &c. in this caſe alſo the tender is not good without notice: for the time (in theſe caſes) being uncertaine, it cannot be imputed to the default or negligence of the Obligee or Feoffee, if he be not preſent at the payment thereof ready to receive it; Vide pl.

Co. ibid. 246. a. 4. Litt. S. 403. Dyer 143. 57. 3, 4. P. M.

14. If a Feme ſole be ſeiſed of Lands in fee, and is diſſeiſed, and then taketh Husband, in this caſe, the Husband and Wife (as in the right of the Wife) have right to enter, and yet the dying ſeiſed of the Diſſeiſor in that caſe ſhall take away the Entry of the Wife after the death of her Husband: becauſe it ſhall be accounted her folly, that when ſhe was ſole ſhe did not enter, and alſo for that ſhe would take ſuch an Husband as would not enter before the Deſcent caſt: But if Baron and Feme have title of Entry into Lands in right of the Wife, and the Tenant dye ſeiſed, the Entry of the Baron is taken away, but if the Baron dye, then may the Feme enter upon the Heire, that is in by Deſcent: for it ſhall be accounted Laches in the Baron, and not in the Feme, nor any way turne to the prejudice of her or her Heires: So if the woman were within age at the time of her taking of Husband, then alſo the dying ſeiſed ſhall not after the deceaſe of her Husband take away her Entry: becauſe no folly can be accounted in her, for that ſhe was within age, when ſhe took Husband, and after Coverture ſhe could not enter without her Husband. It is otherwiſe where a Condition is to be performed, which ſee ubi ſupra. Baron and Feme. Deſcent, a lawfull entry.

Litt. S. 416. Co. ibid. 251. Co. ibid. 251. a. 3.

15. If there be Tenant for life, Remainder for life, Remainder in fee, and the Tenant for life aliens the Land to another in fee, and he in the Remainder for life makes continuall claime before the dying ſeiſed of the Alienee, and after the Alienee dyes ſeiſed, and he in Remainder for life alſo dyes before any Entry made by him: In this caſe, he in the Remainder in fee may enter upon the Heire of the Alienee, by reaſon of the continuall claime made by him in the Remainder for life, becauſe ſuch right as he had to enter ſhal remain to him in the Remainder after him, in as much as he in the Remainder in fee could not enter upon the Alienee in fee during the life of the Remainder for life, and becauſe he could not make continuall claime, for none can make continuall claime, but he that hath title of Entry. Continuall claime, right of Entry.

Litt. S. 438. Co. ibid. 259. b. 3.

16. There are divers wayes of excuſing a mans not appearing in Court, and all allowed by Law, as by Impriſonment, whereof Littleton ſpeaketh, S. 438. alſo, per inundationem aquarum, tempeſtatem, pontem fractum, Navigium ſubtractum per fraudem petentis, minorem ætatem, defenſionem ſummonitionis per legem, mortem Attornati, breve de warrantia diei: Alſo, ſi petens eſſoniatus ſit, vel ſi placitum mittatur ſine die: But ſickneſſe (as one ſaith) is no cauſe of ſaving a default: becauſe it may be ſo artificially counterfeited, that it cannot be known. Excuſe of not appearing.

Litt. S. 442. Co. ibid 262. b.

17. If a man be diſſeiſed, and he arraigne an Aſſize againſt the Diſſeiſor, and the Recognitors of the Aſſize chaunt for the Plaintiff, and the Juſtices of Aſſize will be adviſed of their Judgement, untill the next Aſſize, &c. and in the interim the Diſſeiſor dyes ſeiſed: In this caſe, this dying ſeiſed ſhall not toll the Entry of the Diſſeiſee: becauſe the bringing of the Aſſize amounts to a continuall claime, and there was no default or neglect in the Diſſeiſee. Note, that this is a Quere in Litt. but ſince reſolved to be Law. An Aſſize mounts to claime.

Co. ibid. 283. a. 1.

18. In an Action of Waſte, upon the Plea, nul waſt fait, he cannot give in evidence Juſtifiable waſte, as to repaire the Houſe, or the like: but he ought to plead it ſpecially: Howbeit, if the waſte be ſuch as came not by any default or neglect in him, he may upon the Plea, nul waſt fait, bring Waſte.

bring in evidence that the waſt was done by tempeſt, lightning, enemies, or the like, and he ſhall be thereupon excuſed, &c.

re-ſervice. ſame tolls Entry.

19. If my Tenant which payes me a Rent-ſervice in groſſe, attornes and payes it to a ſtranger, this ſhall not put me out of Poſſeſſion of the Rent; no, albeit I bring an Aſſize againſt the ſtranger for the Rent, and thereby admit my ſelf out of Poſſeſſion, or although the ſtranger die, and a Deſcent is caſt; for ſtill I may diſtraine my Tenant for all the rent arreare; becauſe it cannot be imputed to my neglect or folly that the Rent was paid to a ſtranger. Litt. S. 579. Co. ibid. 323. b. 3.

mitter.

20. If Tenant in tail enfeoffs his Son and another of Land in tail by his Deed in fee, and Livery of Seiſin is made to the other according to the Deed, and the Son knowing nothing thereof, agrees not to the Feoffment, and after he that takes the Livery of Seiſin dyes, and the Son doth not occupy the Land nor take the profits thereof, during the life of the Father, and then the Father dyes; Here, this is a Remitter to the Son, becauſe the Frank-tenement is caſt upon him by the Survivor, and no default was in him, for that he never agreed to the Feoffment. Litt. S 684. Co. ibid 359. a. 4.

damages ſince the laſt.

21. If a man be diſſeiſed, and the Diſſeiſor makes Feoffment to A. B. and C. and Livery is made to A. and B. but C. was not at the Livery, nor agrees to the Feoffment, nor takes any profit of the Land, and after A. and B. dyes, and C. ſurvives them, and the Diſſeiſee brings his Writ Sur diſſeiſin in the per againſt C. who ſhewes all the matter, how he never agreed to the Feoffment, and ſo he ſhall be diſcharged of the damages, albeit he was Tenant of the Frank tenement of the Land, and that the Statute of Glocester will, that the Diſſeiſes ſhall recover damages in a Writ of Entry grounded Sur diſſeiſin againſt him that is found Tenant; yet here, becauſe C. was in no default, the Diſſeiſee ſhall not recover damages againſt him. Litt. S. 684. Co. ibid. 359. b. 2.

leaſe of many.

22. If two make a Feoffment in fee, and warrant the Land to the Feoffee and his heires, and the Feoffee releaſe to one of the Feoffors the warranty, yet he ſhall vouch the other for the moyety: So likewiſe if one enfeoffs two with warranty, and the one releaſe the warranty, yet the other ſhall vouch for his moyety, cauſa patet. Co. ibid. 393. a. 1.

adition, ceptance. nfirmation.

23. If a Leaſe be made rendring rent at a certaine day, with clauſe of Re-entry upon non-payment thereof, and the rent is behind two years; in this caſe, if the Leſſor accept the laſt halfe years rent, all the arrearages are diſcharged, and by ſuch acceptance the Leaſe is confirmed; but if the Condition be, that if he alien any part of the Land without the Leſſors licence, then it ſhall be lawfull for him to re-enter; In this caſe, if the Condition be broken, and the Leſſor do afterwards accept the rent, this is no confirmation of the Leaſe; becauſe ſuch aſſignment may be done ſo ſecretly that the Leſſor cannot poſſibly diſcover it; for in the firſt caſe the Leſſor may know the time when the Condition ought to be perform'd, but not in the other: See the like caſe adjudged in Com. Banco, Mich. 39, & 40 El. which Plea begins Term. Hill. 38 El. Rot. 1302. in Treſpaſſe inter March & Curteis. Co. l. 4. 64. a. 4. Pennants caſe.

ipe.

24. The Sheriffs of London at the end of their office, delivered by Indenture, B. in execution to the new Sheriffs, and whereas he was in execution at the Suit of C. and D D. was onely named in the Indenture, B. after ſuch Delivery makes an eſcape, C. brings an Action of debt againſt the old Sheriffs upon this eſcape, and recovers; becauſe here, the default was in the old Sheriffs, for that they did omit the execution of C. in their Indenture; and therefore albeit B. was within the Walls of the Priſon after ſuch Delivery over by Indenture, yet was he not Priſoner to the new Sheriffs, but it was an eſcape from ſuch Delivery: Nevertheleſſe there was no reaſon that C. ſhould be without Co. l. 3. 71. b. 4. Weſtbies caſe.

remedy in this caſe; for that no default or negligence could be imputed to him in that miſ-carryage.

Co. 3. 78. b. 4. in *Feimers* caſe. Fine levied by Covin.

25. A. poſſeſſed of divers parcels of Land within the Mannor of S. for years, at will, and by copy, and of others in fee there, demiſeth the whole to B. for life, and then levies a Fine to him and his heirs of ſo many Acres as amount to the whole Land, continues Poſſeſſion, and payes the rents to the Lord, as if no ſuch thing had been done; In this caſe, albeit five years paſſed, yet the Lord was not barred, and yet in the Statute of 4 H. 7. the ſaving is of ſuch right, as firſt ſhall grow, remaine, &c. And there, the right firſt accrued to the Leſſor after the Fine in the Forfeiture: Nevertheleſſe, the Lord (in this caſe) ſhall not be barred, becauſe A. having Lands within the ſame Mannor, and ſtill continuing the Poſſeſſion and paying the Rents, the Lord could not poſſibly take notice of the Covin: So if Leſſee for life (having Lands in the ſame Towne) levy a Fine, the Statute ſhall be conſtrued againſt the words, and the Leſſor ſhall be allowed five years after the death of the Leſſee for life, and in that caſe Non-claime ſhall not prejudice him; becauſe he was forced to it by the Leſſee, whoſe Conveyance was ſo cloſe, that he could have no notice, that any Fine was levied of his Land.

Co. l. 4. 10. b. 4. in *Bevils* caſe. Renewal Services, &c. ſince 32 H. 8. Limitation.

26. The Statute of 32 H. 8. c. 2. for limitation of Rent or Service (to have actuall Seiſin thereof within forty years, &c.) extends not to ſuch a Rent or Service, as by common poſſibility cannot happen or become due within forty years; as if a Seigniory conſiſts of Homage and Fealty onely, for the Tenant may live above forty years after they are made: So if the Service be to cover the Lords Hall, or to go with him, when there ſhall be a Warre betwixt the King and any of his Enemies; ſuch caſuall Services as by common poſſibility cannot happen within forty years, are not within that Statute; neither is the Lord bound by it, becauſe it is not his default or neglect, that he cannot prove himſelf ſeiſed of the Services within forty years, according to the limitation of that Statute: There is the ſame Law of a Formedon in deſcender, for the Tenant in tail may live forty years after the Diſcontinuance: So likewiſe, if the Lord releaſe to the Tenant ſo long as I. S. hath heirs of his body, and forty years paſſe, and I. S. dye without heire of his body; in this caſe alſo, albeit the forty years paſſe, yet the Lord may diſtraine for them when he pleaſeth, becauſe they are not within the purview of the Statute, cauſa qua ſupra.

Co. l. 4. 27. a. 2. in *Chiſton* and *Molineux* caſe. Waſte by Baron. Copy-hold.

27. Where a Feme, Tenant for life of a Copy-hold, takes Baron, and the Baron commits Waſte againſt the cuſtome of the Mannor and dyes, the eſtate of the Feme is (in this caſe) forfeited by the act of the Baron, becauſe it was her folly to take ſuch a Husband as would commit Waſte: But if a ſtranger commit the Waſte without the conſent of the Baron, that is no Forfeiture, becauſe it cannot be then imputed to her folly.

Co. l. 4. 50. a. 4. in *Andrew Ogeths* caſe. Expoſition of that. Arrearages coverable by Executors.

28. When a thing is due in right and truth, and becomes remedileſſe by no default in the party, to whom it is ſo due, but by the Act of God, as by the death of the party, or the like: In ſuch caſes, Acts of Parliament, which are made to give remedy in ſuch caſes ought to have a favourable conſtruction, which may extend to advance the remedy proportionably to the miſchief and defect in Law, according to the meaning of the makers thereof. And therefore if a man grants a Rent-charge out of his Lands, and after aliens the Land to a ſtranger, who lets it at will to another, the rent is arreare, and the Grantee dyes: In this caſe, the Executors of the Grantee may diſtrain for the arrearages by the Statute of 32 H. 8. c. 37. And that the words of that Statute are, That it ſhall be lawfull for the Executor, &c. to diſtrain for the arrearages, &c. upon the Lands ſo long (onely) as they remain in the Seiſin or Poſſeſſion of the Tenan

nant in Demeſne, who ought immediatly to have paid the Rent, or of any other claiming by and from him, &c. Here, by the words of this Statute the Executors may onely diſtrain the Grantor or his immediate Grantee (by and from being in the Conjunctive;) Yet in the caſe above they may diſtraine the Tenant at will, and the word and ſhall be taken for or: to the end the Leſſee at will may be underſtood to derive his eſtate from him, and ſo to be comprehended within the purview of that Statute, for the reaſon above alleadged.

Clergy. Appeale.

29. By the Statute of 3 H. 7. c. 1. An Appeale cannot be brought againſt the Felon after Clergy had; but (by conſequence) before Clergy it may: And yet if a Felon be indicted, and upon his tryall confeſſes the fact, and prayes Clergy, and the Judges take time, and will be further adviſed, and then an Appeale is brought; In this caſe, the act of the Court (to be adviſed as to the allowance of the Clergy) ſhall not prejudice the party, eſpecially in caſe of life: there being no default in him, why he had not his Clergy, when he prayed it. *Holcrofts* caſe, alleadged in *Wrote* and *Wigges* caſe. Co. l. 4. 46. b.

Benefice. Laps.

30. If a Clerke be preſented, admitted, and inſtituted, to a benefice with cure, above the value of 8 l. and after and before induction to the firſt he accepts another benefice with cure, and is thereunto inducted; In this caſe, the firſt is void by the Statute of 21 H. 8. for the words of the Statute are, If any parſon having one benefice with cure, &c. accept and take one other, &c. and he that is inſtituted to a benefice is ſayd in Law to accept and have a benefice: Howbeit, although by ſuch inſtitution to the ſecond benefice, the firſt is void by the eccleſiaſticall Law without any deprivation or ſentence declaratory, yet no laps ſhall (in this caſe) incur againſt the Patron without giving notice to him, no more then if the Church had become void by reſignation or deprivation, and yet the Patron may take notice thereof, if he pleaſe, and may preſent according to the ſaid conſtitution, but he is not bound to take notice thereof at his perill: It is otherwiſe, if he had been inducted, for then he is to take notice at his perill, becauſe the Aſſurance after induction is declared by act of Parliament, whereunto every one is party, per Popham & totam Curiam. Co. l. 4 79. b. 3. in *Digbies* caſe. F. N. B. 35. K.

Waſte. Tenant at will.

31. Tenant at will ſhall not be charged for permiſſive waſte, for it is not in his default, but in the Leſſors, he having an uncertaine terme. Co. l. 5. 13. b. The Counteſs of *Salops* caſe.

Emblements owne.

32. Tenant for life, Remainder in fee, the Tenant for life lets for years, the Leſſee for years is ouſted, and the Tenant for life diſſeiſed, the Diſſeiſor lets for years, and his Leſſee ſowes the Land, the Tenant for life dyes, the Remainder in fee enters, the Leſſee of the Diſſeiſor carries away the graine, and the Remainder in fee brings an action of Treſpaſſe: And in this caſe it was adjudged, that becauſe the Leſſee of Tenant for life could not know the end of his terme, he had right to the Land, and (by conſequence) to the graine, as things annexed to the Land, and albeit by the death of the Tenant for life his Intereſt to the Land determined, yet the Land being ſowen before the death of the Tenant for life, his right to the emblements remaines. Co. l. 5. 85. a. In *Henry Knivets* caſe.

Execution of the body not valuable.

33. Upon a Judgement in debt, after the Plaintiff hath purſued an Elegit, he cannot have a Capias ad ſatisfaciendum againſt the body, becauſe he hath made his election, which he cannot waive ſo long as the Defendant lives, neither yet can he have an Elegit after the party is taken upon a Capias ad ſatisfaciendum returned ſerv'd, or after the Defendant is in Priſon thereupon: Howbeit, if (in ſuch caſe) the party dye in Priſon (which is the Act of God and can do no wrong) the Plaintiff may have recourſe to his Elegit, or take ſome other courſe, untill he be ſatisfied, for his death is not the Plaintiffs fault: So if there be two bound in an Obligation joyntly and ſeverally, and the Plaintiff hath Judgement againſt them both, and cauſe them both into Priſon, out of Co. l. 5. 86. b. 4. &c. in *Plumfields* caſe.

which one of them escapes, and so the debt as to him is discharged, and the Plaintiff is to have his remedy against the Sheriff: Vera. albeit the debt seemes to be discharged against the other also (because they were joyntly bound, and it was but one intire debt) yet the other remaining in Prison shall not have his Audita querela, but shall there continue untill the whole debt and damages be fully satisfied: because corporall Imprisonment is not valuable satisfaction of the debt, and it was not in the Plaintiffs default, that he did escape.

Co. l. 5 10. a in *Spensers* case. 34. Upon a Writ brought by Journeys accounts, if the first Writ abated by the default of the Demandant himselfe, as by his misinformation of the name of the Tenant, or of the Towne, &c. in such case, the Demandant shall not have a Writ by Journeys accounts, as the Books are in 48 E. 3. 21. 14 H. 4. 23. 22 H. 6. 62. 13 H. 4. Executors 118. But if the Writ abate by the default of the Clerk, as where it abates for false Latine, or variance, or for default of forme, &c. there, the Demandant shall have the benefit of a new Writ by Journeys accounts, because it was the default of the Clerk of the Chancery, and not the default of the Demandant himselfe, as the Books are agreed in 26 E. 3. Quare Impedit 163. 25 E. 3. 54. 48 E. 3. 5. 14 H. 4. 23. &c. So likewise, when the Writ abates for want of due Summons, for that is the default of the Sheriff, and no default in the Demandant: and therefore in such case also the Demandant shall have a new Writ by Journeys accounts. A Writ by Journeys accounts. Diversity.

Co. l. 7. 6. b. in *Milbornes* case. *Vide Mar.* 57. *Ex.* 51. 35. For a Robbery done in the morning ante lucem, the Hundred shall not be charged, because the Robbery was done in the night: And albeit no time be expresst in the Statute of Winchester. 13 E. 1. yet by good exposition it shall not extend to Robbery done in the night; for no Laches or negligence can be attributed to the Hundred for default of well guarding the Country in the night, also in the night they cannot make pursuit after the offendors, or inquiry for them, and then to charge them, when they are deprived of their convenient meanes, would be hard. Vide 57. 50. Hundred.

Co. ibid. 36. At the Common Law, if one were slaine in a Towne in the day time, viz. so long as there was full day light, and he that slew him escaped, the Towne where the Felony was committed was to be amerced for it, and so it is held in 3 E. 3. Corone 238. Dum quis felonice occisus fuit per diem, nisi felo captus fuit, Tota villata illa onerentur: But if such a murder or homicide were done in the night, the Towne shall not be amerced by the Common Law: because, in such case, no Laches or negligence can be imputed to the Inhabitants of the Towne: For God hath ordained the day for men to worke in, and the night for them to rest in: And therefore the Prophet saith, Posuisti tenebras, & facta est nox, in qua pertranseant bestiæ silvæ, &c. sub oritur & congregati sunt, exit homo ad opus & operationem & redit vespere: And the Poet saith: The Towne not amerced for homicide done then.

Ut jugulent homines surgunt de nocte latrones.

Co. l. 5. 27. b. 6. in Sir *Hugh Portmans* case. 37. If the Plaintiff in a Quare Impedit be nonsuited after appearance, that is peremptory, and a good bar in another Quare Impedit, albeit that it be brought within the six moneths; because in such case the Defendant upon title made shall have a Writ to the Bishop to admit his Clerke, which is a good bar in another Quare Impedit, and with this accords 19 E. 4. 9. 22 H. 6. 44, 45. 33 H. 6. 1. 55. 20 E. 4. 14. 21 E. 4. 2. b. &c. F. N. B. 38. b. So if the Plaintiff in a Quare Impedit discontinue his suit, the Defendant upon title made shall have a Writ to the Bishop, and therefore this is also peremptory, and with this accords 31 H. 6. 15. Likewise, if the Plaintiff be made a Knight, hanging the Writ, the Writ shall abate, and the Defendant shall in that case also have a Writ to the Bishop: and (by consequence) that is also peremptory: Bar in Quare impedit, & contra.

nonplaint: for, all these are the Acts of the Plaintiff, and he doth them in his own wrong: But if the Writ of Quare Impedit within the six moneths abate for false Latine, or insufficiency of the forme, that is the default of the Clerk, and shall not be peremptory to the Plaintiff, neither shall the Defendant thereupon have a Writ to the Bishop, but the Plaintiff may in such case have a new Writ, because (in these cases) no default can be imputed to the Plaintiff, and with this agrees 3 H. 6. 3. 31. H. 6. 15. F. N. B. 38. b. & h. Vide 34. Ass. Pl. 9. So likewise it is, if the Writ abate for the mis-naming of the Plaintiff or Defendant, if the Plaintiff confesse it, the Defendant shall not have a Writ to the Bishop: for this may be also the default of the Clerke in writing it, and with this accords F. N. B. 38. See also 31 H. 6. 15.

goods stollen in an Inn. 38. If a man come to a common Inn, & deliver his Horse to the Hostler and say nothing to him, whether the Hostler keep him in the Stable, or put him into a Pasture adjoyning without any order from the Owner to put him out to Pasture: In this case, if the Horse be stollen, the Innholder shall make him good: But if the Owner give order to the Hostler to put him abroad into a Pasture, which being done, the Horse is stollen or otherwise lost, in such case the Innholder is excused, and shall not answer for him: because by the Writ in the Register, the Innholder is not to answer for more then is within his Inn, and all that he is to answer for, albeit the guest hath a key delivered to him, and locks his goods, &c. within his Chamber, Vide the case at large. Co. l. 8. 32. a. *Calvys* case.

amerciament, where. 39. In all Writs of Precipe quod reddat, as Writs of right, Formedon, Aiel, Entry, &c. Precipe quod permittat, as to have Estovers, Common, &c. or Precipe quod faciat, as Writs of Customes, Services, &c. if the Demandant be barred, or non-suited, or his Writ abate for being vicious in matter or forme, he shall be amerced: but if there be two Demandants, and the Writ abates by the death of one of them, the other shall not be amerced, 48 E. 3. 23. 46 E. 3. Account 40. 5 E. 3. 3. 22 H. 6. 7. 38 E. 3. 32. 7 H. 6. 36. 41 Ass. 14. Co. l. 8. 60. b. 4. in *Beecher's* case.

the like. 40. In all personall Actions, as Debt, Detinue, and the like, without cause or deceit in the Court, and also in Actions, which comprehend force or deceit in a Court of Record, if the Plaintiff be barred, non-suited, or the Writ abate for being vicious in matter or forme, he shall be onely amerced, not fined, but if the Writ abate by the death of one of the Plaintiffs, or if one of the Plaintiffs appeare and the other is non-suited (which in Latin in personall Actions is a non-suit of both) he that survives or appeares shall not be amerced, for there was no default in him: but onely in him that appeares not: 47 E. 3. 6. 43 Ass 3. 7. H. 6. 36. 38 E. 3. 32. 41 Ass. 14. Co. l. 8. 61. a. 2. in *Beecher's* case.

he like. 41. In all Actions reall and personall, if part be found for the Demandant or Plaintiff, and part against him, or all or part against one of the Tenants or Defendants, and nothing or but part against the other, the Demandant or Plaintiff shall be amerced, except no default be found in the Demandant or Plaintiff: And therefore in Trespasse of Battery against Baron and Feme, supposing the Battery to be done by both, and the Feme is onely found guilty, &c. and the Baron acquit: yet the Plaintiff shall not be amerced, for the Plaintiff cannot have any other Writ in such case, and therefore because no default was found in him, he shall not be amerced in this case. Co. l. 8. 61. b. in *Beecher's* case.

he Kings ard dyes be- re homage. 42. The Kings Tenant in Capite under age is to remaine in Ward, and the King is to receive the profits of his land untill he do his homage, and that cannot be untill he have sued out his Livery: And if at his full age he tender his Livery, he is to have three moneths to perfect it: Notwithstanding, if after such tender, by the Act of God (viz. death) he is prevented to perfect it, the King shall not receive the profits after such tender: Co. l. 8. 175. a. *Hales* case. *Prerogativa Reg. cap.* 6.

but

but the next heire shall have them, and after such tender he might in that case sell the Land or any part thereof, and the sale shall be good, notwithstanding the Kings hands upon it.

Co. l. 9. 87. a. 4. in *Pinchons* case.

43. It is a Rule in Law, that where the Testator might have waged his Law, his Executors shall not be charged with that duty, & contra: because that advantage is lost by the act of God (viz. by death) and therefore shall not be imputed to any default of his: So debt lyeth not against Executors for the dyet of their Testator, because he might (in that case) have waged his Law, and so have freed himselfe thereof, which advantage being lost by his death (and no fault of his) his Executors, who represent his person, shall not be prejudiced thereby: Howbeit, if a Prisoner in the Tower for treason receive his diet of the Lieutenant, and dye, the Lieutenant shall have an Action of debt against his Executors for such diet of the Testator; and the reason is, because (in that case) the Testator could not in his life time have waged his Law, as it is adjudged in 27 H. 6. 4. b. in Thomas Boduigans case: And the reason why no wager of Law lyeth in such case is, because every Gaoler ought to keep his Prisoner, in salva & arcta custodia, and so must of necessity finde him victualls, &c. Vide pl. ibid.

Where wager of Law is of Testator, Executors not chargeable.

Co. ibid. 87. b. 4.

44. In 14 H. 6. 19. b. R. G. brings a Writ of debt of ten marks against T. T. and others, Executors of W. W. and counted, that the Testator had retained the Plaintiff to be with him for a yeare in the art of limming of Books, paying him ten marks per annum; and there Martin held, that the Action of the Executors was not maintainable: And he took a difference betwixt this case of a Limmer, and that of a common Labourer; for a Labourer shall be compelled to labour, and his salary is put in certaine by the Statute; and therefore there is no reason that the Servant should lose by the death of his Master (being bound by the Law to serve) which shall not be said to be his default, but the Act of God and the Law; Howbeit, in the case of a Limmer, he was not compelled by the Law to serve; And so when he made the Covenant, it was his owne act and folly, and no act in Law; and he might have taken a Specialty: And this is good Law: but the true reason of that difference is, because in the Case of a common Labourer the Testator could not wage his Law, but in that of a Limmer he might, &c. Vide pl. ibid.

The like.

Co. l. 10. 76. b. 2. in the case of the Marshalsey.

45. If the Court of Common Bench in Plea of debt award a Writ of Capias against a Duke, Earle, &c. which by the Law lyes not against them, and this appeares in the Writ it selfe: yet if the Sheriff arrest them by force of the Capias, albeit the Writ is against Law, nevertheless the Court having Jurisdiction of the cause, the Sheriff shall be excused, because there is no default in him but in the Court, and with this agrees 38 H. 8. Dyer 60. b. So it is likewise, if a Justice of Peace makes a warrant to arrest one for Felony, who is not indicted, albeit the Justices in the Warrant, yet he that makes the arrest by force of that Warrant, shall not be punished by a Writ of False Imprisonment, because is is not his fault, but the Justices, who is Judge of the cause: and with this agrees 14 H. 4 16.

Erroneous writ.

Co. l. 11. 27. a 3 in *Henry Pigots* case.

46. If the Obligee himselfe alter the Obligation in any point materiall or not materiall by interlining, addition, racing, or the like, that shall make the Obligation void: but if a Stranger do it without the Obligees privity in a point not materiall, that shall not avoid the Deed: as if an Obligation be to be made to the Sheriff for appearance, &c. and in the Obligation after the sealing and delivery thereof, these words, Vicecom. Comit. Oxon, are interlined by a Stranger without the privity of the Sheriff, yet the Obligation remaines good, notwithstanding such interlining by a Stranger without the Obligees privity, in regard it was not

An Obligation void or not void by Erasure, &c.

not conceived to be a point materiall, Benedicto Winchcombe, his name and firname being there inserted before, and being done by a ſtranger it ſhall not in that caſe prejudice the Obligee.

Refuſall of Clerk.

47. Where the Biſhop refuſeth the Clerke of the Patron for non-abilitie or crime, he ſhall not preſent by Laps, unleſſe he have firſt given notice to the Patron of the inſufficiency of his Clerke, & the Patron neglect to preſent within the ſix moneths; for (in ſuch caſe) after the ſix months paſt, the Patron ſhall have a Writ to the Biſhop, if the Church be void, and the Biſhop have not in the meane time collated. F. N. B. 34. i.

48. If one ſell another a peice of Cloath and warrant it to be of a certaine length; in this caſe, if the peice be not of that length, a Writ of Deceit lyeth againſt the Vendor, albeit the Warranty be but by Parol. F. N. B. 98. k.

Cuſtome of Woad, uncertaine by tempeſt.

49. In Fogaſſes caſe in the Comment. the ſtorme at Sea being a thing, that could by no poſſible meanes be prevented, and that cauſing the uncertainty of the quantity of the Woad, and there being no meanes of knowing the certainty thereof before it ſhould be landed and weighed, and that uncertainty being cauſed by no folly in the Defendant Fogaſſa, there was great reaſon he ſhould be excuſed, and not made lyable to forfeit the Woad, albeit he had not obſerved the ſtrict words of the Statute in that caſe. Pl. Com. 9. b. 1. in *Fogaſſes* caſe.

Rent-charge, *pro conſilio impendendo.*

50. If a man hath a Rent-charge granted him, Pro conſilio impendendo, and afterwards he is attainted of Treaſon and caſt into Priſon, ſo as the Grantor cannot have acceſſe to him for his counſell, yet he ſhall have the Rent during his Impriſonment; for he may give counſell as well in Priſon as at large, and there is no fault in him, that the Grantor came not at him. Dyer 2. 6 H. 8.

A Sheep-biter.

51. If a man hath a Dog that kills Sheep, the Maſter of the Dog being ignorant of the Dogs condition, he ſhall not be puniſhed for it: It is otherwiſe if he had notice of the Dogs condition and quality, for then it may be imputed to his own folly and neglect: See alſo Dyer 29. 195. 28 H. 8. Dyer 25. b. 163. 28 H. 8.

Repaire of River-bankes.

52. A Leaſe was made of a Meadow bordering upon the River of Exe in Devon by Deed indented, and the Leſſee covenanted to ſuſtaine and repaire the Banks of the River, in paine of ten pounds, and afterwards by reaſon of a ſudden flood upon ſubverſion of certaine Weares in Devon, the Banks were decayed and periſhed, &c. and by the opinion of Fitz. and Shelley, the Leſſee ſhall be excuſed from the Penalty, as if it had been of an Houſe, that had been burnt by lightning or thrown down by tempeſt, which are the act of God and cannot be reſiſted: Howbeit, in this caſe he ought to repaire the Banks in convenient time. Dyer 55 70. 22, & 29 H. 8.

Act of God.

53. A man makes a Leaſe for years of Land, and a Flock of Sheep, rendring rent, and all the Sheep dye: In this caſe, the rent ſhall be apportioned, becauſe it was the act of God and no default or neglect of the Leſſee. Dyer 56. 15. 35 H. 8.

Bond eaten with Mice.

54. In debt upon an Obligation, if after non eſt factum pleaded and entred, the Labels by the negligence of the Clerke are eaten off with Mice, it ſeems this ſhall not prejudice the Obligee, becauſe it did not happen by his default. Dyer 59. a. 12. 36. H 8.

Deſcent, a tolall Entry.

55. A man being beyond Sea out of the Realme is diſſeiſed, and after he returnes into the Realme, and then departs out againe, during which time there is a Deſcent caſt: In this caſe, if it cannot be proved, that he had notice of the Diſſeiſin when he was in the Realme, it ſeemes this Entry is not taken away, for by intendment of Law he could not have notice of the Diſſeiſin, at the time when it was done: So if an Infant be diſſeiſed, and at his full age he goes beyond Sea, or takes Warre, or is impriſoned, during which time there is a Deſcent, his Entry Dyer 143. 57. 3, 4. P. M.

try ſhall be taken away for this Laches after his full age; but if he were within age, when he did ſuch an act, it ſhall be otherwiſe.

Dyer 241 50. 8 El. 56. A Capias ad ſatisfaciendum returnable Tres Trin. being not ſerved, the Solicitor of the Plaintiff takes it againe of the Sheriff, and one of the Prothonotaries Clerks makes the Tres Trin. Tres Mich. and then the Solicitor re-delivers it to the Sheriff unſealed, viz. to the Sheriff of London, who makes Warrant thereupon to a Serjeant, who arreſts the Defendant, and afterwards the Writ is ſealed; And in this caſe, albeit the offenders for this undue practiſe were committed to the Fleet, yet afterwards it appearing upon examination, that the Plaintiff was ignorant of the practiſe, the Writ was received, and the Defendant committed alſo to the Fleet in execution. Undue practiſe.

Dyer 260. 24. 9 Eliz. 57. Partition againſt two, the one confeſſes the Partition, and the other pleads to Iſſue, and in the Record of Niſi prius, the name of the Defendant was omitted by the negligence of the Clerk, being written & prædictus ſimiliter, without more; Alſo the Jury was betwixt the Plaintiff and both the Defendants, whereas one of them was not party to the Iſſue, which errors being apparent were amended by the direction of the Juſtices of Niſi prius (quod nota) and ſo the Jury taken. Partition.

Dyer 318. 10. 15. El. 58. The Earle of Kent being reputed but an Eſquire, brings a Writ of Entry by the name of Eſquire, and the Pannell was returned; now by the Heralds he was then newly declared Earle, and thereupon he challenged the Array, becauſe there was no Knight in the Pannell, but it was not allowed, for that there was no default in the Sheriff, he being commonly reputed an Eſquire. The Earle of Kent.

150. *Nemo debet rem ſuam ſine facto vel defectu ſuo amittere.*

Litt. S. 442. Co. Inſt. pars 1. 262. b. 1. If a man be diſſeiſed and he arraigne an Aſſize againſt the Diſſeiſor, and the Recognitors of the Aſſize chaunt for the Plaintiff, and the Juſtices of Aſſize will be adviſed of their Judgement, untill the next Aſſize, &c. and in the Interim the Diſſeiſor dyes ſeiſed: In this caſe, this dying ſeiſed ſhall not toll the Entry of the Diſſeiſee, becauſe the bringing of the Aſſize amounted to a continuall claime, and Nemo debet rem ſuam ſine facto vel defectu ſuo amittere. Note, that this is a Quære in Littleton, but is ſince adjudged for good Law. Vide ſupra M. 149. Ex. 17. An Aſſize.

Litt. S. 443. Co. ibid 263. b. 1. &c. 2. If an Abbot dye, and during the vacation, a man tortiouſly enters into part of the Land belonging to the Monaſtery, and dyes thereof ſeiſed, and afterwards a new Abbot is elected; this Deſcent ſhall not toll the Entry of the new elected Abbot: becauſe, this Entry and Deſcent was not occaſioned by any act or default of or in the new Abbot, the Land being during the vacation in abayance and cuſtody of the Law, and for that by the death of the former Abbot (which is the act of God) there was no perſon able to make continuall claime. This is alſo a Quære in Litt. It is ſo likewiſe of Dean and Chapter, Mayor and Comonalty, Maſter and Fellowes of a Colledge, or any other Corporation aggregate of many, where ſuch a Deſcent happens when they want their head, viz. Dean, Mayor, Maſter, &c. for then they are not in a capacity to make claime: Alſo if an Uſurpation to a Church be had in time of Vacation, this ſhall not prejudice the Succeſſor to put him out of Poſſeſſion, but that at the next avoydance he ſhall preſent. Deſcent toll not Entry.

Litt. S. 588, 589. Co. ibid. 323. b. 3. 3. If my Tenant, who payes me a Rent-ſervice in groſſe, attornes and payes it to a ſtranger, this ſhall not put me out of poſſeſſion of the Rent; albeit the ſtranger die and a Deſcent is caſt: for ſtill I may diſtraine Rent paid to a ſtranger.

diſtraine my Tenant for all in arreare, and, Nemo redditum alterius invito Domino precipere aut poſſidere poteſt.

Releaſe of warranty. 4. If one enfeoffe two with warranty, and the one releaſe the warranty, yet the other ſhall vouch for his moyety. Co. ibid 393. a. 1.

A Donative. 5. If the Patron of a Church, Prebend, Chantery, Chappell, &c. Donative, both once preſent to the Ordinary, and his Clerk is admitted and inſtituted, it is now become preſentable, and ſhall never be Donative after, and then alſo Laps ſhall incur to the Ordinary, as it ſhall of other Benefices preſentable: but a Preſentation to ſuch a Donative by a ſtranger, and admiſſion and inſtitution thereupon, is meerly void. Co. ibid. 344. a. 2.

Debt. Execution. 6. If the Defendant in debt dye in execution, the Plaintiff may have a new execution by Elegit or Fieri facias; becauſe the Plaintiff ſhall not be prejudiced, nor the Defendant take benefit by the act or tort of the Defendant, in not paying his debt, when no default was in the Plaintiff, he having purſued the due and ordinary courſe of Law. Co. l. 5. 86. b. 4. in *Blumfields* caſe.

Lord, Meſne, and Tenant. 7. The King is Lord, A. Meſne, and B. Tenant of the Manor of D. B. commits treaſon, and after Attainder an Office is found, and the Manor ſeiſed into the Kings hand, afterwards the King grants the Manor to C. and his heirs, Tenendum de nobis, heredibus & ſucceſſoribus noſtris, & aliis capitalibus dominis feodi illius per ſervicia vide debita & de jure conſueta: Theſe are ſufficient words to create a tenure in the Meſne as it was before the Attainder and Forfeiture, and the tenure of the Meſne is thereby preſerved; for, it is againſt reaſon and equity, that the Meſne, who did no wrong, ſhould loſe his ſervices. Co. l. 6. 6. a. 1. in Sir *Jo. Molyns* caſe.

Seiſin of rent. 8. Where payment of a rent by a Bayliff, or Tenant for life, for years, or at will, workes a ſpeciall prejudice to the Maſter or Leſſor, it ſhall not be accounted ſufficient Seiſin thereof; as if the Lord hath not had Seiſin of his rent within forty years, and the Tenant makes one his Bayliff generally of his Manor; In this caſe, the Bayliff cannot without expreſſe command of his Maſter, pay this remobileſſe rent to the Lord, or if he do it otherwiſe, it worketh no Re-ſeiſin thereof, ſo it is alſo, if the Tenant for life, for years, or at will pay ſuch a rent without order of the Tenant of the Frank tenement. Co. l. 6. 59. a. 4. in *Bredimans* caſe.

I grant without Attornement. 9. If a man be ſeiſed of a Manor, part in Leaſe for life, and other part in Leaſe for years, and he levy a Fine to A. to the uſe of B. in taile, with divers Remainders over: In this caſe, B. ſhall avow for rent, or have an Action of Waſte without Attornment: for when a Reverſion is ſetled in any in Judgement of Law, and he hath no poſſible meanes to compell the Tenant to atturne; and no Laches or default in him, in ſuch caſe, he ſhall avow or have Action of Waſte without Attornment: for the Rule is, Quod remedio deſtituitur, ipſa re valet, ſi culpa abſit. Co. l. 6. 68. a. 1. in Sir *Moyle Finches* caſe.

Quare Impedit lyes. 10. A Quare Impedit againſt the Biſhop and Incumbent, without naming the Patron, ſhall abate: for otherwiſe, the Patronage ſhall be in that caſe recovered againſt him who hath nothing in the Patronage: and it is againſt reaſon, that he, who is Patron, ſhould be diſpoſſeſt and outed of his Patronage, when he is a ſtranger and no party to the Writ. Co. l. 7. 25. b. 4. in *Halls* caſe.

To damage without notice. 11. A. by a writing purporting his Will, deviſeth Land to B. and his Heires, but afterwards (without the knowledge of B.) enfeoffs C. to the uſe of B. for life, with divers Remainders over, provided that B. diſturbe not the Executors of A. from carrying away the goods: A. dyes, B diſturbs the Executors, the next in Remainder enters upon B. into the Land: In this caſe, albeit B. had made diſturbance againſt the words of the Proviſo, yet he ſhall not thereby forfeit his terme without notice of the Condition; for none ſhall loſe any Eſtate or Intereſt, which he lawfully hath, without ſome act or Co. l. 8. 92 a. 3. in *Frances* caſe.

default in himſelfe; and therefore (in this caſe) in as much as B. was a ſtranger to the Feoffment, he ſhall not loſe his eſtate without notice given him of the Proviſo: Quod noſtrum eſt ſine facto ſive defectu noſtro amitti ſeu in alium transferri non poteſt; which accords with the opinion of Popham in Mallories caſe in the 5. Report 113. b. that the Feoffee of Land or bargaine of a Reverſion by Deed inrolled and inrolled ſhall not take advantage of a Condition for non-payment of rent reſerved upon a Leaſe upon Demand therof, without giving notice thereof to the Leſſee. Co. l. 5. 113. in Mallories caſe.

The like. 12. If the eſtate of the Lord of a Manor ceaſe by Limitation of an uſe, whereby the uſe and eſtate thereof is transferred to another, the demand of the rent of a Copy-holder, who denies to pay it to him, cauſeth no Forfeiture without giving notice to the Copy-holder of the alteration of the uſe and eſtate: And ſo it was adjudged Hill. 1. Jac. in Treſpaſſe, inter Beconſhaw Plaintiff, and Southcote, and others Defendants. So likewiſe the Bargaines of a Manor by Deed inrolled and inrolled ſhall not take advantage of a Forfeiture of a Copy-holder for denyall of payment of rent without notice to him given of the bargaine and ſale; for the Law will never compell a man to take notice of acts done amongſt ſtrangers, or of any uncertainty upon paine of forfeiting a mans Eſtate or Intereſt, but in ſuch caſes notice ought to be given to thoſe that are to ſuffer the loſſe: It is otherwiſe when a man binds himſelfe to do a thing, as to performe an Arbitrement, to pay the ovus, which ſuch an Auditor aſſigned ſhall charge him withall, or the like; for in ſuch caſe he takes upon him to doe it. Co. l. 8. 91. a. 4. in Bonnes caſe. Co. ibid. g. a. 1.

Error in a Fine. 13. A Fine was levyed of a Manor and other Lands, to the value of twenty Marks per annum, ſo as the Kings-ſilver was ſixty ſhillings, which was paid, but in entring of it upon the Writ of Covenant, the Manor was omitted, and thereupon Error was brought, but after that, albeit the tranſcript of the Fine was removed into the Kings B. the Judges of the Common Place amended the Record, becauſe it appeares to them, that the Kings-ſilver was paid for the Manor: and whereas the Writ of Covenant was, Dede maigſo, for Teſte maigſo, they amended that alſo, and certified it into the K. B. upon Diminution, and it was allowed; for it was againſt reaſon, that the Miſpriſion of the Officer or Clerk ſhould prejudice the Conuſee, when it happed not by any default or neglect in him. Vide Dyer 225. 34. Co. l. 5. 45. Bolons caſe.

Nisi prius. 14. At a Niſi prius the Jury after departure came againe, and ſaid, that they were all agreed ſave one, who had eaten and drunk, thereupon they were remanded at the request of the Plaintiff, and after gave Verdict for him, and this was held good: Howbeit day was given in Bank to aſſeſſe a Fine upon the ſaid Juror, and the Fine was aſſeſſed at twenty pounds, but the Plaintiff had Judgment, Dyer. 118. b. 5 Eliz.

Execution. 15. The Solicitor of the Plaintiff and the Sheriff conſpire to arreſt one condemned in debt, and after procure a Capias ad ſatisfaciendum, and the Priſoner being brought into the Court upon the returne of the Writ, had the matter examined, and it was found, ut ſupra, yet becauſe the Plaintiff was not particeps criminis, he remained ſtill for execution, and the Sheriff and Solicitor were amerced, viz. the Sheriff at ten pounds, and the Solicitor at five pounds. Dyer 248. b. 8 Eliz.

151. It driveth not a man to ſhew, take notice of, or do that which by intendment he knoweth not, or ſhould or cannot do.

Men in one County take no notice of things done in another.

1. Becauſe the Inhabitants of one County do not accompany together with men of another County at County Courts, Turnes, Leetes, and other Courts, therefore in Judgement of Law they ſhall take no notice of a Livery in another County to paſſe Lands in their owne County. Co. Inſt. part 50. a. 1.

Waſte.

2. If waſte be done Sparſim (here and there) in Woods, the whole Wood ſhall be recovered: So likewiſe in Houſes ſo many whole Roomes ſhall be recovered, wherein the Waſte is done: for it would be impoſſible, or (at leaſt) inconvenient for the Plaintiff to recover onely part of the Wood, or part of the Roomes of the Houſes; becauſe (in ſuch caſe) he could not be able conveniently to make any uſe of them. Co. ibid. 54. a. 4.

Protection caſt.

3. A protection may be caſt either by a ſtranger or by the party himſelfe; for, an Infant, Feme covert, Ponke, or any other may caſt a protection for the Tenant or Defendant; and this difference there is, when a ſtranger caſteth it, and when the Tenant or Defendant caſteth it himſelfe; for, the Defendant or Tenant caſting it, he muſt ſhew cauſe wherefore he ought to take advantage of the protection, but a ſtranger need not know the cauſe, ſave onely that the Tenant or Defendant is thereby protected, becauſe it is preſumed the ſtranger may not know the cauſe. Co. ibid. 131. a. 4.

Challenge.

4. He that challengeth for the Hundred, muſt ſhew in what Hundred it is, and not drive the other party to ſhew it. Co. ibid. 157. a. 2. Dy. 231.

Not to ſhew writings.

5. If Land be morgaged upon Condition, and the Morgagee letteth the Lands for years, reſerving a rent, the Condition is performed, the Morgagor re-enters, in an Action of Debt brought for the rent, the Leſſee ſhall plead the Condition and Re-entry without ſhewing forth any Deed: So in an Aſſize the Tenant pleads a Feoffment of the Anceſtor of the Plaintiff unto him, &c. the Plaintiff ſaith, That the Feoffment was upon Condition, &c. and that the Condition was broken, and pleads a Re-entry, and that the Tenant entred and took away the Cheſt, in which the Deed was, and yet detaineth the ſame: In this caſe, the Plaintiff ſhall not be enforced to ſhew the Deed. Co. ibid. 226. a. 3.

Wager.

6. Whereſoever a man is charged as Executor or Adminiſtrator, he ſhall not wage his Law, for no man ſhall wage his Law of another mans Deed, becauſe the Law preſumes he is not acquainted therewith: It is otherwiſe of a Succeſſor to an Abbot, for that the Houſe never dyes. Co. ibid. 295. a. 4.

Acceptance of rent, no confirmation.

7. If Leaſes on Condition the Leſſee ſhall not alien any part, the Condition is broken, the Leſſor before notice accepts the Rent due after: This acceptance is no confirmation of the Leaſe; becauſe the Aſſignment may be ſo ſecret, that the Leſſor cannot know it: It is otherwiſe, where a Leaſe is made rendring rent at a certaine day with clauſe of Re-entry upon non-payment of the Rent; in this caſe, if the Leſſor hath advantage of Re-entry upon non-payment of the Rent at the day, acceptance of the Rent after confirmes the Leaſe; becauſe the Leſſor in ſuch caſe might know the day and time of payment of the rent. Co. l. 3. 64. a. 4. in *Pomants* caſe.

Certaine quantities of water not required.

8. In an Action upon the caſe for diverting a ſtreame of water from a Mill, the Plaintiff may alleadge the diverting of a great quantity of water without ſhewing how much in certaine; for it is impoſſible to ſhew how much water in certaine runs by the Mill, and the quantity of water is not materiall. Co. l. 4. 88. b. 4. in *Luttrells* caſe.

Co. l. 4. 27. b. 4. in *Hubbard* and *Hammonds* case.

9. Where a Copy-holder payes a certaine Fine, he ought to pay it at the Court upon his admittance; but where the Fine is uncertaine, the Copy-holder is not bound to pay it presently, because he knowetn not what Fine the Lord will assesse, & nemo tenetur divinare; And, because he cannot then provide any certaine summe, he shall have a convenient time to pay it, in case where the Lord limits no certaine time for the payment thereof. Copy-hold Fines.

Co. l. 4. fol. b. 2. in *Penruddocks* case.

10. A. raiseth an house to the nuisance of the cartilage of B. in this case; if A. alien his house, and B. his cartilage, the Feoffee of B. shall not have a Quod permittat against the Feoffee of A. before notice given to the Feoffee of A. to abate the nuisance; because he was a stranger to it, and (by consequence) might be ignorant thereof: Whereas, B. might have brought it against A. without notice, for that A. was the Author of the nuisance. Nuisance. Quod permittat.

Co. l. 5. 113. b. 1. in *Mallories* case.

11. If the Lessor in the absence of the Lessee enter and make Feoffment, and the Lessee re-enter, albeit this amounts to an Attornment in Law, yet without notice given of this Feoffment to the Lessee, the Feoffee shall not make demand of the Rent reserved upon the Lease by Entry for the Condition broken: for, although he may (in that case) maintain as have an Action of Debt for the Rent, as an Action of Waste (because in his Abeyance as Count, he may alledge the Feoffment whereof the Lessee might then have notice): yet he cannot demand the rent upon the Condition without notice; for then it would not be possible for the Lessee to know to whom he should pay the rent, to whom his terme might be saved notice of the Feoffment in such case, before he should have forfeited his terme: So if the Lessor bargaine and sell the Reversion by Deed indented and inrolled, the Bargainee (albeit here needs no Attornment) shall never take benefit of a Condition, upon demand of a rent, without giving notice to the Lessee of the bargaine and sale: for although the bargaine and sale by Deed indented and inrolled be upon Record, yet for as much as it may be inrolled in so many Courts in the great manner, the Law will not force all the Farmors of England, who have Conditionall Leases, to make every six moneths such infinite search to take their termes, but the Law (in such cases) for the preservation of the Interest and Terme of the Lessee compells the Bargainee (who is to take benefit of the Condition) to give notice thereof to the Lessee, who is a meer stranger thereunto. Per Popham, and not denyed by the rest of the Justices. Notice requisite to take advantage of a Condition.

Co. l. f. 14. b. 3. in *Bulmers* case.

12. Covinous of the passages in deceit need not to be alledged specially; for it sufficeth (in such cases) to say, malitiose & deceptive machinatus fuit, &c. without alledging particulars; because such passages are so secret and uncertaine, that they cannot be known to tryed. Deceit.

Co. l. 5. 6. a. 3. in *Sparkes* case.

13. Robbery of an house by day or by night is neither within the letter nor meaning of the Statute of Winchester, 13 E. 1. because when a Robbery is done in an house, it is so secretly done, that the Hundred cannot take notice thereof: It is otherwise of Robbery upon the highway, for that is openly done, and therefore the Hundred may of themselves take notice thereof. Robbery.

Co. l. 8. 60. 2. in *Beechers* case.

14. If the Defendant or Tenant plead a false Deed made to him, or deny his owne Deed, and it be found against him, or if relicta verificatione cognovit actionem, he shall be fined for his falshood, Quia coram debemus esse de proprio facto: but if one deny the Deed of his Ancestor, or plead a Deed made to his Ancestor, and it is found against him, yet he shall not be fined but only amerced, Quia de alieno facto: So if one deny a Recovery or other Record, whereunto he is party, he shall not be fined; for it is not his act but the Act of the Court, and he doth not deny the Record absolutely, but, non habetur tale recordum. 15. If Deniall of a Deed, fine or merciament.

The pedigree of the Donee not named.

15. If a man brings a Formedon in Reverter or Remainder, as heire, unto him of an eldeſt Son, which ſurvived his Father, or the like, in the pedigree on the part of the Donor, or of him in Reverſion or Remainder ſhall abate the Writ; but on the part of the Donee, albeit the Donee had many iſſues in the lineall deſcent inheritable to the eſtate taile, and which held the Land, the Demandant need not name any of the Iſſues in the Clauſe, Et quæ poſt mortem, but he ſhall ſay, Et quæ poſt mortem le Donee ad ipſum reverti debet, ou quod le Donee obiit without Iſſue; becauſe the Demandant is a ſtranger to the pedigree of the Donee, and therefore (by intendment) knoweth it not. Co. l. 8. 88. a. 3. in *Buckmores* caſe. Pl. Co. 56 a. 1.

An underraine fea good.

16. In Debt againſt an Adminiſtratrix, the Defendant pleads one Recognizance of eight hundred pounds, and another of one thouſand pounds, the Plaintiff replies, that the eight hundred pounds Recognizance was for the payment of 400 l. which is paid, & that the 1000 l. Recognizance was for the performance of Covenants, which are not broken, yet both kept on foot uncancelled by Covin of the Defendant: In this caſe, the replication of the Plaintiff is good notwithſtanding the uncertainty, for albeit he neither pleads a Defeaſance for the payment of the foure hundred pounds, nor what Covenants in particular they were, for which the one thouſand pounds Recognizance was entred into, yet the replication is good; becauſe the Creditor is a ſtranger to them, and hath no meanes by Law to know the particular certainties. Co. l. 9. 110. a. 3. in *Meriel Treſhams* caſe.

Deed not ſhewed.

17. He that claimes a thing as any Right or Intereſt out of it, or ſuſtifies in right of the Grantee, in ſuch caſes the firſt Grant ought to be produced; As the ſecond Grantee of a Rent-charge ſhall ſhew the firſt Grant, and ſo ſhall his Bayliffe, &c. but where a man is a ſtranger to a Deed, and claimes nothing contained in the Grant, nor any thing out of it, nor doth any thing in the right of the Grantee, as Bayliff or ſervant, there he may plead the Patent or Deed without ſhewing it. Co. l. 10. 93. b. 4. in Doctor *Leyfields* caſe.

Damages, where counted for, and where not.

18. There is a Diverſity betwixt perſonall Actions and reall Actions, wherein damages are to be recovered, for in perſonall Actions the Plaintiff ſhall count for damages; becauſe he may know in certainty what damage he hath ſuſtained before the Writ purchaſed, and thoſe he ſhall onely recover, but in reall Actions the Demandant ſhall never count for damages, becauſe he is to recover damages, hanging the Writ, which being uncertaine, he ſhall not count for them, but ſhall have them aſſeſſed after by Writ of Inquiry, as in a Writ of Entry for Diſſeiſin, or in the nature of Aſſize, as it was held in 33 H. 6. 47. a. Co. l. 10. 117. a. 2. in *Robert Pilfords* caſe.

Union, *imperſonee.*

19. When a thing is beyond time of memory, a man is not compellable to prove the Commencement thereof, as where a Prior and his Predeceſſors have been Parſons Impropriors of a Church time out of mind, proofe of the Commencement thereof, and whether it were by appropriation or union is diſpenſed withall: becauſe (by intendment) no ſuch proof can be made. Co. l. 11. 10. a. 2. *Priddle* and *Nappers* caſe.

Action of Account.

20. If a man having cauſe to bring an Action of Account againſt one as his Bayliff or Receiver, makes his Executors and dye: In this caſe, his Executors ſhall have that Action, for that the Executors may by teſtis and otherwiſe know how to charge them: but an Action of Account lies not againſt the Executors of a Bayliff or Receiver for the receit or occupation of their Teſtator: becauſe (by intendment) they being ignorant of the accounts of their Teſtator, are not able to defend themſelves: ſo likewiſe, the Executor of a Merchant ſhall have an Action of Account againſt another Merchant, but not againſt the Executor of a Merchant. Fitz. N. B. 117. c. e.

Covin.

21. Covin need not be certainly pleaded, but may be alleadged generally: for Covin is a ſecret thing contained in the heart of a man, whereof (by intendment) another man can have no knowledge, and then Pl. Co. 46. a. 3. in *Wimbiſh* and *Talbois* caſe.

then the law will never force a man to ſhew that, which by intendment of Law lieth not within his cognisance: And therefore if a woman ſhall have power of a rent-charge without ſhewing the deed of the grant; becauſe it belongs not to her. vide plus ibidem, & 54. b. 1. in Wimb. and Talb. caſe.

Pl. Co. 64. b. 4. in Dive and Maninghams caſe. vide Pl. Co. 83. b. 4. in Stranges caſe.

22. A generall act needs not be ſpecially pleaded; for the Judges ought to take notice thereof without ſpeciall pleading; but a particuler Act, or a particuler Act in a generalitie (as when it concerns a certaine ſort of men, as Sheriffes, Juſtices, or the like) ought to be ſpecially pleaded, at leaſt the branch thereof, which concerns the preſent matter: for (by intendment) the Judges cannot take ſuch notice thereof as of an Act which generally concernes all the people of England, within which number they themſelves are included. Pleader of a Statute.

P. C. 81. b. 3. in Partridges caſe, and 84. a. 3. and 85. a. 4.

23. In an action brought upon the Statute of 32. H. 8 9. againſt ſuch as buy pretenced titles, if it be for the demiſe of a leaſe, the plaintiff ſhall not be compelled to ſhew the terme, rent, or any other circumſtances thereof; becauſe he is a ſtranger thereunto, and (by intendment) can by no meanes come to the knowledge thereof; And this may well be reſembled to the caſes of ſhewing of deeds: And therefore in 35. H. 6. 8. where an action is brought for goods carryed away, the defendant juſtifyes, for that at the time of the treſpas ſuppoſed to be done he was Mayor of the towne of C. and that the King had granted unto the defendant (being then Mayor) and to the Comonaltie, and their ſucceſſors, all goods of outlawed perſons within the ſaid Towne, and ſhews that the plaintiff was outlawed, and ſo juſtifies: And by the better opinion the plea is good without ſhewing the letters patents; becauſe they now belong to his ſucceſſor and not to him, and he is now become a ſtranger to them, albeit he was once privy to them, being Major, &c. vide plus ibidem. and 84. a. 3. and 85. a. 4. Monſtrance des faits. Pretenced titles.

Pl. C. 123. a. 4. in Sir Richard Kinſleys caſe.

24. In an action brought againſt the Sheriff upon the Statute of 8 H. 6. 15. for making an untrue returne of the Knights of Parliament, the Plaintiff ſhall not be compelled to plead a certain number of the Electors; becauſe he can by no means come to the knowledge of them, and therefore ſhall erpreſſe them generally by the greater number, without giving the number of them in certaine: So in debt againſt an executor, the Defendant pleades, ne unques executor, ne adminiſter come executor, to this the Plaintiff may ſay, that at ſuch a place he adminiſtered, without ſhewing what things he there adminiſtred, becauſe he cannot come to the knowledge or number of them, being not privie thereunto: And ſo it is alſo of things of an infinite number, as if a man be bound to ſave the Sheriff harmeleſſe of all things concerning his office, he ſhall alledge, that he hath diſcharged him generally, without ſhewing the things in certaine, becauſe the things are of ſo great a number, that the certainty thereof cannot (by intendment) be remembred or knowne: Alſo, if a man be bound to ſheere yearly the ſheepe of the Obligee going in ſuch a paſture, he ſhall ſay that he hath ſhorne them without ſhewing the number, for peradventure ſome years there were more, ſome years fewer, ſo as he cannot (by intendment) remember the certaine number. Election of Knights of Parliament.

Co. l. 5. fo. Gooches ca.

25. A. brings an action of debt againſt B. upon an Obligation by the father, wherein he bound himſelfe and his heires, B. pleads riens per deſcent, A. maintaines that aſſets at D. in com. S. deſcended unto him: And upon a Niſi prius before Sir Chriſtopher Wray the deſcent was proved, and agreed; whereupon B. the defendant gives in evidence, that long before the action commenced, he enfeoffed one C. of the Land, which was alſo confeſſed; but A. the plaintiff proves likewiſe, that that feoffment was made by fraud to deceive him of his action, and therefore voide by the Statute of 13. Eliz. 5. Now it was ſtrongly urged, that this ought to have been pleaded, and could not upon the iſſue (Riens per deſcent

Jour

Jour del breife purchaſe) be brought in evidence: But it was reſolved that it might be brought in evidence without pleading; becauſe fraud and covin (for that they are odious) are ſo privily hatched in an hollow tree (in arbore cava & opaca) and ſo artificially covered and concealed, that the partie grieved hath no meanes to find or know them, and then to force the Plaintiff to plead the feoffment (whereof he hath no notice) and alſe that it was done by fraud, is both againſt Law and reaſon, being indeed very miſchievous to creditors, and tending much to the maintenance and increaſe of fraud and covin.

Feoffment upon condition.

26. A. enfeoffes B. upon condition, that if A. after the death of B. pay unto the heires, executors, or adminiſtrators of B. 100 l. that then the feoffment ſhall be voide, afterwards B. enfeoffes C. and C. enfeoffes D. &c. B. dies, A. payes the 100 l. to the heire of B. In this caſe, the condition is performed, albeit the heire was then a ſtranger to the Land, becauſe the heire is the perſon expreſſely named in the condition, to whom the payment ſhall be made, and the feoffor is a ſtranger to the conveyances, which the feoffee and his aſſignes have made, and therefore the feoffor ſhall not take notice at his perill of the validitie thereof, nor of the conditions or limitations annexed thereunto. Co. l. 5 96. b. 1. in *Goodals* caſe.

Quo minus Farmer pleaded without ſhewing it.

27. In the Exchequer the Kings Farmer brings a Quo minus, and in his Count entitles Qu. Eliz. to the reverſion of his terme by the grant of his leſſor (who was Sir Richard Sackvile) of the reverſion to the Duke of Northumberland with his attornement to the ſaid Duke, and after the Duke grants it over to E. 6. in fee, by deed enrolled, and doth not alleadge expreſſely, that Sir Richard Sackvile grantes the reverſion by deed, but generally, quod conceſſit reverſionem hadendam in feodo, ad quam quidem conceſſionem idem querens ſe inde Attornavit: And in this caſe the Count (per Dyer) was good without ſaying per cartam, and without producing it into Court; becauſe the Farmer was a ſtranger to the deed or grant, and had not the power of it, for that it belonged not to him, neither did he convey any title to him under it; ſo in an Aſſiſe, the Plaint was made of Land and rent, and the tenant conveyed them unto him by the grant of A. in taile, the remainder to the King in fee, and prayed Aide of the King without ſhewing the deed, and without ſaying, conceſſit tenementum per cartam, & habuit Auxilium, &c. Dyer 274. 18. 1, 2. Eliz. T. 17. H. 6. Rot. 121.

Formedon.

28. In a Formedon in Reverter the demandant need not ſhew the pedigrees of the iſſues of the donee, nor who was laſt ſeiſed, becauſe he is a ſtranger to the pedigree, and by intendment cannot come to the knowledge of it: It is otherwiſe in a Formedon in diſcender; Quære in Remainder. Dyer 216. 56 4. Eliz.

Appeal.

29. The Leſſee of a Parſon brings an Ejectione firmæ, the defendant pleads that the parſon was deprived, the Plaintiff ſaith, that the parſon hath appealed to the Arch-Biſhop of Canterbury in Curia ſua prerogativa de Arcubus, and becauſe the words of the Statute of 24. H. 8. 12. are, the appeal that ſhall be to the Arch-biſhop of the Province, or, &c. without limiting any Court in certaine, the Defendant demurred; And theſe words to the Arch-Biſhop of Canterbury were held ſufficient, becauſe of ſubſtance, &c. And in this argument although it appeared by the Civilians that the Arches were not the Prærogative Court, yet becauſe the Defendant did not ſhew it, but demurred generally, the Temporall Judges were not bound to take notice of their Juriſdictions. Dyer 240, 46. 7. Eliz.

Formedon in rem.

30. In a Formedon in Remainder brought upon a Remainder in uſe after the Statute of 27. H. 8. It was held by the Juſtices, that the demandant need not ſhew the deed of the remainder, 1. becauſe (in this caſe) the remainder might be created without deed, 2. for that the deed did appertaine to the feoffees, and not to Ceſtuy que uſe, and therefore might not be in his power to produce. Dyer 277. 18, 19. Eliz.

A.

Hob. 51. *Holmes* and *Twiſt.*

30. A. being poſſeſt of 10 tunne of woad, ſels to B. one tunne thereof, for which B. promiſeth to pay him according to ſuch rate as he ſhould ſell the reſt for; A. ſels the reſt after the rate of 23 l. the tunne: In this caſe, A. ſhall not recover the 23 l. of B. before he hath acquainted B. at what rate he ſold the reſt; becauſe the price is a ſecret thing betwixt A. and his other chapmen, whereof B. is not bound to take notice; as it was adjudged upon a Writ of Error in the Exchequer Chamber T. 12. Jac. Rot 1758. Aſſumpſit.

152. Nor to do that, which were in vain for him to do.

Litt. S. 103. Co. Inſt pars 1. 79. a. 2.

1. If an heire female be married within the age of 14. in the life of her anceſtor, and the anceſtor die, ſhe being ſtill within the age of 14, the Lord ſhall have but the ward of the land untill her age of 14, and ſhall not within the two years after tender her marriage, according to the Statute of Weſtminſter. 1. cap. 22. for that is without the caſe of the Statute, it being in vaine for the Lord to tender her marriage, when ſhe is already married: Natura non facit vacuum, nec Lex ſupervacuum. Tender of marriage.

Litt. S. 179. Co. ibid. 129. a. 3.

2. If a villaine purchaſe a reverſion, the Lord (after attornment) ought to claime it upon the land to entitle himſelfe thereunto; ſo it is alſo of a rent, common, or other inheritance iſſuing out of land: but if a villaine purchaſe the ſeigniory, or a rent, common, or, &c. iſſuing out of the land of the Lord himſelfe; it is ſaid, that the ſeigniory, rent, common, &c. are extinguiſhed in the Lords poſſeſſion without any claime; for it is needleſſe to claime them upon the Land, when he himſelfe is poſſeſſed of the land, out of which they are iſſuing. Claime by Lord.

Co. ibid. 123. b. 3.

3. A villain ſhall not have an appeal of Robberie againſt his Lord, for that the Lord may lawfully take the goods of the villain as his owne: and then it would be in vaine to bring an appeale againſt the Lord for taking his owne goods. Appeal. Lord and Villain.

Litt. S. 194. Co. ibid. 116. b. 3.

4. If the Lord mayhem his villain, he may be indicted for it at the ſuite of the King, and thereupon make Fine for his offence; but the villain ſhall not have an appeale of mayhem againſt his Lord; becauſe in ſuch appeale he ſhall recover onely damages, which the Lord after execution may take againe, and ſo the Judgement would become inutile and illuſorie, and ſapiens incipit a fine, And the law never giveth an action, where the end of it can bring no profit or benefit to the Plaintiff. Appeale of mayhem.

Litt. S. 273 Co. ibid. 178. b. 4.

5. A man ſeiſed of 30 acres of land of equall value, and having two Daughters, gives 15 acres with one of them in frankmarriage and dies, and the other 15 acres deſcends to the other Daughter: In this caſe, there ſhall be no caſting into hochpot; becauſe the lands were of equall value at the time of the partition; for it were in vaine to put them into hochpot, being equall, no alteration ſince (by the act of God or otherwiſe) whereby the lands are bettered or impaired, being to be had in conſideration. Hochpot.

Co. ibid. 19. b. 1.

6. If there be two tenants in common of a rent, as money, graine, or any ſeverable thing, and they be diſſeiſed thereof, they ſhall bring ſeverall aſſiſes for the recoverie thereof, becauſe they have it by ſeverall titles: Howbeit, if the rent be a Hawke, horſe, or any other intire thing, which cannot be ſevered, they ſhall joyne in an aſſiſe for it: becauſe the Law will never enforce a man to demand that, which he cannot recover, and a man cannot recover the moitie of an Hawke, horſe, or the like, Lex neminem cogit ad vane ſeu inutilia. Tenants in common.

Co. ibid. 218. a. 4.

7. If I grant a rent charge in fee out of my land upon condition, there if the condition be broken, the rent ſhall be extinct in my hand; becauſe Claime not needfull.

because I (that am in Possession of the Land) need make no claime upon the Land, and therefore the Law shall adjudge the rent held without any claime.

aime the 8. If a man make a Feoffment unto me in fee, upon condition that I shall pay unto him twenty pounds at a day, &c. and before the day I let unto him the Land for years reserving a rent, and after faile of paying the twenty pounds; In this case, the Feoffor shall retaine the Land to him and his Heires, and the rent is determined and extinct, for that the Feoffor could not enter, neither hath he need to claime upon the Land, because he himselfe was in Possession, and the Condition being collaterall is not suspended by the Lease. Ibid.

e like. 9. If a man by his Deed in consideration of Fatherly love, &c. covenant to stand seised to the use of himselfe for life, and after his decease to the use of his eldest Son in tail, the Remainder to his second Son in taile, the Remainder to his third Son in fee, with a Proviso of revocation, &c. The Father makes a Revocation according to the Proviso; In this case, the whole estate is immediately (upon the Revocation) revested in him without Entry or Claime, causa qua supra. Ibid. b. 1. & 237. a. 2.

ase good. 10. A Release to a Tenant at sufferance (as to one that holds over his terme) is void, but a Release to a Tenant at will by the Owner of the Land is good to convey the Inheritance unto him, because there is between them a Possession with a privity; for it would be in vaine to make an estate by Livery to him who hath already Possession of the Tenements by the Owners consent. Co. ibid. 270. b. 2. Litt. S. 460, 461.

ument. 11. That which is apparent to the Court by necessary collection out of the Record need not be averred, for it were vaine to aver that, which is apparent to the Court already. Co. ibid. 303. b. 3.

ornment of tail. 12. Albeit Tenant in taile may attorne where the Reversion of his estate is granted over, yet he is not compellable to attorne, although such Grant of the Reversion be by Fine, because he hath an estate of Inheritance, which may continue for ever: and therefore it were a vaine thing to require any Attornment from him. Co. ibid. 310. a. 4.

rnment. 13. If a Lease be made for life, the Remainder to another in tail, the Remainder to the right heires of the Tenant for life; In this case, if the Tenant for life grant his Remainder in fee, that Remainder passeth without Attornment; for here, if any should attorne it should be the Tenant for life, and it were in vaine for the Tenant for life to attorne upon his own Grant. Litt. S. 578. Co. ibid. 309. b. 1.

rnment. 14. In these cases following, the Tenant is not compellable to attorne; because if he should it were in vaine for him so to do: As 1. if an Infant levy a Fine, the Tenant shall not be compelled to attorne; because the Fine is defeasible by Writ of Error during his minority: So if Land be holden in ancient demesne, and he in the Reversion levieth a Fine of the Reversion at the common Law, in this case, the Tenant shall not be compellable to attorne, because the estate that passed is reversible by a Writ of Disceit: Also if Tenant in tail (before the Statutes of 4 H. 7. and 32 H. 8.) had levyed a Fine, the Tenant should not have been compelled to attorne, because it was defeasible by the issue in tail: but since those Statutes (which give strength to Fines to bar the Issue in tail) the reason of the common Law being taken away, the Tenant in this case shall now be compelled to attorne, as it was adjudged in Justice Windhams case, Co. l. 3. fol. 86. Lastly, if an alienation be in Mortmaine, the Tenant shall not be compelled to attorne, because the Lord Paramont may defeate it. Co. ibid. 318. a. 4.

Co. l. 5. 21. a. 1 Sir *Anthony Mayns* caſe.

Disability to make ſurrender.

15. A. letteth for one and twenty years to B. and is bound to make a new Leaſe to B. upon ſurrender of the old, A. leaſes to another for eighty years by Fine; in this caſe, the Bond is forfeit; Albeit the firſt thing to be done by B. viz. to ſurrender, and albeit he never ſurrender: for by the Fine he hath for eighty years, A. hath diſabled himſelfe both to take the ſurrender and to make a new Leaſe; And the Law will not put B. to a thing which will be vaine and fruitleſſe, Lex neminem cogit ad vana & inutilia per agenda: but it would be a vaine thing to compell B. to ſurrender to A. when A. is not in a capacity to take it: So if a man ſeiſed of Lands in fee Covenants to enfeoffe I. S. of them upon requeſt, and after he makes Feoffment in fee of the ſaid Lands; in this caſe, I. S. ſhall have an Action of Covenant without requeſt, becauſe it would be in vaine for I. S. to make requeſt, when the other hath diſabled himſelfe to do it.

To make Feoffment.

Co. l. 5 121. b 4. in *Longs* caſe.

A wound an Indictment.

16. In ſome caſes upon an Indictment of manſlaughter it may be requiſite to expreſſe the length and depth of the wound, becauſe it may appeare thereby whether or no the wound were mortall; but when the wound penetrates through the body it is not neceſſary to ſhew them; becauſe it were vaine to ſhew them, when the wound appeares to be mortall of it ſelfe without expreſſing thoſe circumſtances.

Co. l. 9. 54. a. 4. in *Ratliffs* caſe.

Nuiſance

17. In a Quod permittat brought by A. againſt B. for building an Houſe to neare the Houſe of A. that it ſtands ouer the Houſe of A. it is ſufficient to ſay, Ad nocumentum liberi tenementi ipſius A. without aſſigning any ſpeciall Nuſance; for it were in vaine to aſſigne any ſuch ſpeciall Nuſance, when it appeares to the Court, that it muſt needs be to the Nuſance of the Plaintiff; becauſe the raine, which falls from the Houſe of the Defendant muſt of neceſſity fall upon the Houſe of the Plaintiff: And Cujus eſt ſolum, ejus eſt uſque ad Cœlum: Alſo by ouer-hanging of the Defendants Houſe, the Plaintiff is hindred of Aire, and building his Houſe higher, &c.

Co. l. 9. 106. a. 4. in *Margaret Podgets* caſe.

Fine of Copyholde

18. A. being Copyholder for life, Remainder for life, the Lord bargaines and ſells and giues a Fine to A. with Proclamations, and five years paſſe without any claime by thoſe in Remainder, nevertheleſſe they in Remainder ſhall not be barred; for no Fine or Warranty ſhall bar any eſtate in Poſſeſſion, Reverſion, or Remainder, which is not veſted and put to a right: becauſe he that hath the eſtate in him cannot be put to his Action, Entry, or Claime: for that he hath already that which Action, Entry, or Claime can veſt in him or give him: And therefore in vaine was the bargaine and ſale and Fine, when they could not alter the eſtates of them in Remainder, and becauſe vaine, alſo void, as to inpeach the eſtates of them in Remainder.

Co. l. 10. 90. a. 4. in Doctor *Leyfields* caſe.

Colour to Plaintiff.

19. Colour ſhall not be given in any Action, where the Plaintiff goes in bar of the right: for it were in vaine to give colour of right, and to bar it after: As in Aſſize or Writ of Entry in nature of an Aſſize, if collateralll Warranty be pleaded, and the Defendant relye upon it, or if an Eſtoppell be pleaded, or Fine levyed with Proclamations, &c. there is no need of any colour to be given, becauſe the Plaintiff is barred, albeit he has right: So it is alſo where the Plaintiff conveys the title unto him by Letters Patents of the King, or by Act of Parliament: for that bars the right, &c. it is otherwiſe, where the Poſſeſſion is onely barred, &c. vide pl. ibid.

P. C. 8. b. 3. in *Fogaſſaes* caſe.

Not ty anſwer.

20. When a man is not bound to doe a thing, and is aſked concerning it, he need not make anſwer thereunto: as in Fogaſſaes caſe exception was taken, for that the ſuerty was not named

named, that was bound for answering the custome, and it was said, that because the Statute speaks of no surety, and the agreement might be good without surety, it had been in vain to speak of it, or to make answer thereunto, and thereupon that exception quasht.

Death not traversable.

21. In a Formedon in Reverter or Remainder, a man shall not shew the death of the particular Tenant, because it is but a Conveyance, and not traversable nor issuable: So in Colthrist and Bevishins case, the Defendant shall not shew the deaths of Henry and Elenor Bevishin, because the Plaintiff Colthrist should have traversed it, and said, that they were alive, he should confesse, that he had not title to the Land before their lives; and would have destroyed his own Action; And therefore in regard their deaths were not traversable, it was in vaine for the Defendant to shew it, (by consequent) he shall not be compelled to do it. P. C. 32. b. 1. *Colthrist versus Bevishin.*

Covin.

22. A man need not shew any speciall cause of Covin when it is apparent; as when Feme Tenant in tail for her Joynture by Covin appears in a Formedon in Remainder brought against her by one that pretends title in Remainder, and she appears the first day without Essoine, View, &c. and Judgement is had against her by nihil dicit; here the Covin is apparent and need not be specially shewed, for it is in vaine to shew that, which is apparent of it selfe: So it is a vaine thing to aver, that an Horse bought, which wants eyes, is blind, when it is apparent that he must be blind when he wants eyes: If the Tenant enfeoff his Son within age by collusion, the Lord shall seise him for his Ward, and shall not be forced to shew this Collusion in speciall, *causa qua supra.* P. C. 49. b. 2. in *Wimbish* and *Talboies* case. Ibid, 55. b. 3.

Pretenced title.

23. In an Action upon the Statute of 32 H. 8. 9. against buying pretenced titles, the Plaintiff need not aver the title or right to be pretenced; because the Statute declares and intends the title to be pretenced, when neither his Ancestors, nor those, from whom he claimes, have injoyed the Land in Possession, Reversion, or Remainder, nor received the rents or profits thereof for a yeare before the purchase thereof: and therefore because it were in vain for him to aver the pretenced title, because the Statute makes it so, he shall not doe it. P. C. 81. a. 4. in *Partridges* case against *Strange* and *Croker.*

153. *Non licet, quod dispendio licet.*

Intendeth.

1. M. Leases for twenty one years to S. and is bound to make a new Lease to S. upon surrender of the old, M. Leases to another for eighty years by Fine, and S. brings an Action of debt upon the Bond: In this case, albeit S. may surrender and ought to do the first act, viz. to surrender, yet M. hath forfeited his Bond, although S. never surrender; for S. shall not now be forced to surrender; because if he should surrender, M. cannot now make him a new Lease, which was the effect and end of the Surrender: for by such Surrender S. will lose his old terme, without possibility of having a new one: And, *Non licet quod dispendio licet.* Co. l. 5. 21. a. 4. in Sir *Anthony Maines*, case.

Parson not to resigne.

2. I. Parson of the Church of G. was bound in an Obligation to the Prior of E. to resigne his Church to the Prior for a certaine Pension, as it should be agreed, the Parson and Prior agree for a Pension of C. s. yet the Parson refused to resigne; And 14 H. 4. 19. a. it was the opinion of all the Court, that albeit they were agreed of the Pension, yet the Parson was not bound to resigne, untill he might be sure of his Pension, and that could not be without Deed; And therefore (in such case) the Co. l. 5. 21. b. 1. ibid. & 14 H. 4. 19. a.

person was not bound to resigne, until the Wife should sooner make a Deed of the Mannor, whereby he might be sure of it.

154. It favoreth Truth, Faith, and Certainty. Vide Max. 41. 29.

Co. Inst. pars 1. 139. a. 3. 1. Regularly, upon a nonsuit the Demandant or Plaintiff may again commence an action of like nature, &c. Nonsuit in Assise peremptory. Howbeit, in an Attaint, if the plaintiff after appearance be nonsuit, it is peremptory, and he is thereby barred from ever bringing an attaint against the first jury again; and the reason is, for the faith that the Law gives to the verdict, and for the terrible and fearefull judgment, that should be given against the first jury, if they should be convicted, and therefore upon the nonsuit the Plaintiff shall be imprisoned, and the pledges amerced. Vide infra 141.

Co. ibid, 352. b. 3. Co. ibid, b. 4. L. 8. 366. 2. A speciall verdict, or at large, may be given in any action, and upon any issue, be the issue generall or speciall; because the truth of the case may be the better discovered and discussed, and justice and right done: so if a man seised of lands in fee, lets them for life without Deed rendring rent, upon condition of re-entry upon non-payment of the rent, whereupon if the lessor enter and the lessee bring an assise of Novel Disseisin, the jurors may find the matter at large, and the Iudges ought to adiudge it for the tenant, albeit regularly a condition is not available without Deed shewed, and although the lessor shew no Deed. A speciall verdict.

Co. Inst. pars 1. 294. b. 4. 3. In an action of Debt (the better to discover the truth) Wager of Law is allowed, that is to take an oath (for example) that he oweth not the Debt demanded of him nor any penny thereof. It is called Wager of Law, because of ancient time the Defendant put in surtie to make his Law at such a day: It is also called, Making of his Law, because the Law (for the discovery of the truth) doth give such a speciall benefit to the Defendant to barre the plaintiff for ever in that case: Howbeit for the further manifestation of the truth, the Defendant ought to bring with him eleven persons of his neighbours, that will avow upon their oaths, that in their consciences he saith truth, so as he himselfe must be sworne De fidelitate, and the eleven De credulitate. Wager of Law.

Co ibid, 303. a. 2. 4. A Count or Declaration, which anciently (and yet) is called Narratio ought to containe two things, viz. certainty and verity, for that it is the foundation of the suite, whereunto the adverse partie must answer, and whereupon the Court is to give judgment, Certa debet esse intentio & narratio, & certum fundamentum & certa res, quæ deducitur in Judicium. Bract. lib. 2. 140. Howbeit, it must be understood, that there are three kinds of certainties; First, to a common intent, and that is sufficient in a Barre, which is to defend the partie and to excuse him; Secondly, a certaine intent in generall, as in Counts, Replications, and other pleadings of the Plaintiff, that is to convince the defendant, and so in Indictments, &c. Thirdly, a certaine intent in every particular, as in Rebutters; because, in respect they conclude a man to alleadge the truth, they ought to be certaine to every intent, and not to be taken by argument or inference. Truth and certainty in Pleading.

Co. ibid, 352. b. 2. 5. Where the verity is apparent upon Record, there the adverse partie shall not be estopped to take advantage of the truth, for he cannot be estopped to alleadge the truth, when the truth appeareth of Record: So if a Fine be levyed without any originall, it is voydable, but not void; howbeit if an originall be brought, and a Retraxit entred, and Estoppel.

after

after that a releaſe is made, or a Fine levied, this is voide, in reſpect the veritie appeareth of record; Likewiſe, an Impropriation is made after the death of an Incumbent to a Biſhop and his ſucceſſors, the Biſhop by Indenture demiſeth the Parſonage for 40 yeares, to begin after the death of the Incumbent, the Deane and Chapter confirme it, the Incumbent dieth, this demiſe ſhall not commence, for that it appeareth, that he had nothing in the Impropriation till after the death of the Incumbent.

Certainty and verity in Counts

6. If a man declare upon a Statute, he muſt recite it truly; for mentioning the Statute and miſreciting it, taketh errour, albeit as to the ſubſtance of his declaration he might have omitted it; becauſe a Declaration ought to have 1. Certainetie, ſo as the defendant may know to what to make anſwer; And therefore when of neceſſitie a thing muſt be ſhewed in certaine in the Declaration, it muſt by no meanes be omitted. 2. Verity, which ought to be joyned with certainty; for if it appeare to the Court, that falſehood is produced in ſtead of truth, the partie, that ſhewes it, hath condemned and himſelfe. P. C. 84. a. 3. in *Partridges* caſe againſt *Strange* and *Croker*.

Waſt. Plea.

7. If the tenant be of ſuffer waſt to be done in houſes, yet if he repaire them before any action brought, there lyeth no action of waſt againſt him. Howbeit in ſuch caſe he cannot plead Nul waſt fait, for that is not true; but he ought to plead the ſpeciall matter, as the truth of his caſe doth import. Vide M. 166. Variance. Inſt. 1. 53. a. 3.

Audita querela.

8. If a man comprehend two ſeverall matters in an Audita querela to extinguiſh the execution, yet the Writ is good; Howbeit (to reduce that double matter to ſome certainty) the Plaintiff ſhall hold himſelfe to one matter onely, and the Defendant ſhall be put to anſwer onely to that. F. N. B. 104.

Shewing Letters and other Deeds.

9. The leſſee or aſſignee of a Patentee ſhall not juſtifie his eſtate by producing onely his leaſe or aſſignement, but he ought to ſhew the originall Letters Patents, or a true copie thereof proved upon oath, to the end the Judges and Jury ſeverally (as it belongs to them) may give certaine Judgment of the ſufficiencie, or inſufficiencie thereof (vide Dyer 28 H. 8. 29. b. pl. 199.) And to it is alſo of other originall Deeds, which are not Letters patents. Vide Dyer 171. 9. Co. l. 10. 92. a. 4. in Doctor *Leyfields* caſe. Co. Inſt. part. 1. 226. a. 1.

Feoffment to uſes.

10. It was agreed by the Juſtices of the C. B. If a man enfeoffe divers, and make livery to one in the name of all, this is not good without Deed of feoffment; becauſe as (if letters) their names being expreſſe in a Deed of feoffment, it may be certainly known who are the feoffees, unto whom the feoffor intended to convey the eſtate. Dyer 35. 26. 29. H. 8.

Attaints

11. In an Attaint the Plaintiff ſhall not give more in evidence nor produce more witneſſes, then he gave or produced to the Petite Jury; but contrariwiſe the Defendant is allowed to give and produce more in affirmance of the firſt verdict. vide ſupra 1. Dyer 54. b. 34. 34. H. 8.

Shewing Letters pat.

12. In anno 8 H. 8. A Merchant obtaines a licence to him and his aſſignes to import Wines in any veſſel unlike Engliſh, notwithſtanding the Statute of 4 H. 7. 16. the aſſignee of the Patentee upon an Information brought againſt him, pleads the Letters Patents of licence and his aſſignement, but produceth not the Letters Patents into Court, for want whereof his Plea was adjudged inſufficient. Dyer 54. a. 17. 34. H. 8.

Averment.

13. If the King grant all his lands, which he had by the Attainder of I. S. and a man will convey the lands unto himſelfe by ſuch a grant, he ought to averre, that I. S. had ſuch lands: So in caſe of a Common perſon, who makes a releaſe of all ſuch Lands as deſcended unto him on the part of his mother in D. there ought to be an averment, what lands deſcended unto him there on his mothers part; for otherwiſe Dyer 87. 8. 100.

wiſe the releaſe is voide by reaſon of the generaltie and uncertainty thereof, &c.

Dyer 229. 51. 6. Eliz. 14. In Debt upon an Obligation to ratifie, confirme, and allow at all times the eſtate of the Obligee, it is no good plea to ſay, that he hath ratified, confirmed, &c. for the confirmation ought to be pleaded by Deed, that it may appeare to the Court to be certaine. Pleadin Deed.

Dyer 243. 56. 8. Eliz. 15. There was a ſubmiſſion to an Award by Obligation, ſo as it ſhould be made and yeilded in Writing at or before Michaelmas, &c. the Plaintiff ſaith, that the Arbitrators by arbitrement in writing factum & partibus before the day deliberat. make an award, &c. and aſſignes the breach, the Defendant demurres, and the Court gave it againſt the Plaintiff; Becauſe 1. it is no direct but onely an argumentative affirmance, that the Arbitrators delivered the award. 2. He ſhould have pleaded the deliverie according to the condition, viz. that it was delivered at or before, &c. and not before onely: 3. Redditum had been a more apt word to anſwer to yeilded, then deliberatum. Arbitra

Hab. 38. Caſe caſe. 16. Upon an Aſſumpſit brought by an Adminiſtrator for a promiſe to the Inteſtate, it is not enough for him to plead the Letters of adminiſtration, but he ought to produce them in Court, that it may appeare to them, that it is as he hath pleaded; So upon plea of a Deed, the Deed muſt be ſhewed in Court. Admin

Hob. 91. 17. The Auditor of the Court of Wards could ſet no charge, or award proceſſe to anſwer any charge, but upon a Record, an office, or the like, Sir Thomas Puckerings caſe.

255. It Diſfavoureth Impoſſibilities.

Co. Inſt. pars. 1. 65. b. 4. 1. If Lands be given to a man and two women, and the heirs of their bodies begotten; in this caſe, they have a joint eſtate for life, and every of them ſeverall Inheritance; becauſe they cannot have one iſſue of their bodies, neither ſhall there be by any conſtruction a poſſibilitie upon a poſſibilitie, viz. that he ſhall Marrie the one firſt, and then the other; And the ſame Law it is, when Land is given to two men and one woman, and to the heires of their bodies begotten. Lands to a two wo

Co. ibid, 28. b. 2. 2. Lands are given to the husband and wife, and to the heires of the bodie of the husband, the remainder to the husband and wife, and to the heires of their two bodies begotten, the husband dies without iſſue; In this caſe, the wife ſhall not be tenant in taile after poſſibility, &c. for the rent in ſpeciall taile was utterly voide, for that it could never take effect, becauſe ſo long as the husband ſhould have iſſue, it ſhould inherit by force of the generall taile, and if the husband die without iſſue, then the ſpeciall taile cannot take effect, in as much as the iſſue, which ſhould Inherit the ſpeciall, muſt be begotten by the husband, and ſo the generall which is larger and greater, hath fruſtrated the ſpeciall, which is leſſer; and the wife in that caſe ſhall be puniſhed for waſt. Generall fruſtra ciall.

Co. ibid, 30. b. 2. 3. A man ſhall be tenant by the courteſie of a Common ſans number, but a woman ſhall not be endowed thereof, becauſe it is Impoſſible to divide it. Common number.

Co. ibid, 48. b 4. Bettiſworths caſe, Co. l. 2. 31. b. 4. 4. If a man be ſeiſed of an houſe and of divers ſeverall cloſes in the ſame County in fee, and makes a leaſe thereof for years, and afterward maketh a feoffment in fee of the ſame, and makes livery of ſeiſin in the cloſes (the leſſee or his wife or ſervants being then in the houſe) the Livery is voide for the whole; becauſe it is impoſſible for the leſſee to be upon every parcell of the land to him demiſed, for the preſervation and continuance of his poſſeſſion thereof; and therefore his being in the houſe Livery V

house as any part of the Land to him demised, is sufficient to preserve and continue his possession in the whole from being ousted or dispossest.

Corporation cannot do homage.

5. A single person may do homage either in his owne right or in the right of another, as the husband and wife in right of the wife, the Bishop in right of his Bishopricke, the Abbot or Prior in right of his Monastery, &c. for the Covent are deap persons in Law: But a Corporation aggregate of many (though capable persons, be the same Ecclesiasticall as Temporall) cannot do homage, as Deane and Chapter, Mayor and Commonalty, and the like, albeit they be seised of Lands holden by homage; because homage must be done in person, and it is not possible for a Corporation aggregate of many to appeare in person; for albeit the bodies naturall, whereupon the Body Politique consists, may be seene, yet the body aggregate or politique it selfe cannot be seene, nor do any act but by Attorney, and homage must ever be done in person. Co. ibid, 66. b. 3.

reliefe.

6. A tenant holdeth of his Lord certaine Lands in socage to pay yearly a paire of Gilt Spurres or 5 s. in money at the feast of Easter; In this case, the rent is uncertaine, and the tenant may pay which of them he will at the said feast, and likewise the tenant may pay which of them he will for reliefe; but if the tenant be to attend upon his Lord at the feast of Christmas, or to pay 10 s. in that case, the reliefe must be 10 s. because it is impossible to double the attendance upon his Lord at Christmas, for that (as the common sayings) Christmas comes but once a year. Co. ibid, 96. b. 4.

homage Ancestrell, Acquittall, warrantie.

7. In case of an expresse Warrantie the heire shall be charged but onely for such lands as he hath by discent from the same ancestor, who created the Warranty; but in case of Homage Ancestrell (which is a speciall Warranty in Law.) the Lawes generally, that the Lord hath at the time of the summer shall be liable to execution in value, whether he hath any by discent or purchase, for it were unreasonable, that the tenant should be driven to recover in value onely those lands, which the ancestor had from the Ancestor, who created the seigniory: because that is (in a manner) impossible, for that the seigniory must be created before the time of memorie, and the first creation of the seigniorie did not create the warrantie, but the continuance of both sides time out of mind created it. Co. ibid, 102. a. 3.

No heire female whiles an heire male.

8. If one mortgage lands to another, and to the heires males of his body, upon condition, that if he die without heire female of his body, that then the donor shall re-enter; this condition is utterly voide; for it is impossible, that he should have an heire female, so long as he hath an heire male. Co. ibid, 164. a. 2.

Condition.

9. Regularly, it is true, that he, who entreth for a Condition broken shall be seised in his first estate, or of that estate, which he had at the time of the estate made upon Condition; Nevertheless, this faileth where there is an Impossibilitie it should be so: As if a man seised of lands in right of his wife, maketh a feoffment in fee by Deed indented, upon condition, that the feoffee should Demise the land to the feoffor for his life, &c. the husband dieth, the condition is broken; In this case, the heire of the husband shall enter for the condition broken, but it is impossible for him to have the estate, that the feoffor had at the time of the condition made: for therein he had but an estate in the right of his wife, which by the coverture was dissolved: And therefore, when the heire hath entred for the condition broken, and defeated the feoffment, his estate doth vanish, and presently the estate is vested in the wife. Co. ibid, 204. a. 3.

Impossible conditions void.

10. In all cases, where the condition of a bond, recognisance, &c. is Co. Inst. part, 1. 206. a. 4.

is poſſible at the time of the making of the condition, and before the ſame can be perfoꝛmed, the condition becomes Impoſſible by the act of God, of the Law, oꝛ of the Obligee, &c. there the Obligation, &c. is ſaved: but if the condition of a bond, &c. be Impoſſible at the time of the making of the condition, the Obligation, &c. is ſingle: And ſo it is alſo in caſe of a feoffment in fee with a condition ſubſequent, that is Impoſſible; In that caſe, alſo the eſtate of the feoffee is abſolute; but if the condition pꝛecedent be Impoſſible, no State oꝛ intereſt ſhall gꝛow thereupon: As if a man be bound in an Obligation, &c. with condition that if the Obligoꝛ do go fꝛom the Church of Saint Peters in Weſtminſter, to the Church of Saint Peters in Rome within 3 houres, that then the Obligation ſhall be voide; In this caſe, the condition is voyde and impoſſible, and the Obligation ſtandeth good. So likewiſe, if a feoffment be made, upon condition, that the feoffee ſhall go, as is afoꝛeſaid, the eſtate of the feoffee is abſolute, and the condition impoſſible and voide: In like manner, if a man make a leaſe foꝛ life upon condition, that if the leſſee go to Rome, as afoꝛeſaid, that then he ſhall have fee; Here, the condition pꝛecedent is Impoſſible and voide, and theꝛefoꝛe no Fee-ſimple ſhall (in this caſe) accrue to the leſſee.

Co. ibid. 218. a. 2. & Pl. Com. 32. a. 4. in *Colthrift's* caſe. And. ibid. 34. b. 4.

11. If a Leaſe be made with Condition to have fee upon payment of money to the Leſſoꝛ oꝛ his Heiꝛs at a certaine day, befoꝛe the day the Leſſoꝛ is attainted of Treaſon oꝛ Felony, and alſo befoꝛe the day is executed: Now is the Condition become impoſſible by the act and offence of the Leſſoꝛ, and yet the Leſſee ſhall not have fee, becauſe a pꝛecedent Condition to encreaſe an eſtate muſt be perfoꝛmed, and if it become impoſſible, no eſtate ſhall accrue. Condition impoſſible, no accrue.

Co. l. 1. 87. a. 4. in *Corbets* caſe. & Co. l. 6. 40. b. 3. in Sir *Anthony Mildmayes* caſe.

12. If Coparceners agꝛee to pꝛeſent by turne, this may be done being partition, as to the Poſſeſſion; ſo if they agꝛee, that one of them ſhall have it from Eaſter to Lammas, and the other from Lammas to Eaſter, this is good, and may be done as to the poſſeſſion and the taking of the pꝛofits, but they cannot make ſeverance of the eſtate of Inheritance in the Land, as the one to have it foꝛ one time and the other foꝛ another, foꝛ ſuch agꝛeement were impoſſible and void: And theꝛefoꝛe if a man intaile his Land to his eldeſt Son, pꝛovided, that if he go about to alien, &c. that then his ſecond Son ſhall have it, &c. this is void; foꝛ it is impoſſible and againſt reaſon, that an eſtate ſhould ceaſe as to one, and yet continue, as to another, oꝛ that (in ſuch caſe) the eldeſt Son ſhould be dead, when one beholds him, and in full life, when another looks upon him, and ſo to make him (as it were) halfe alive and halfe dead. Vide pl. ibid. Perpetuity.

Co. l. 2. 51. a. 1. Sir *Hugh Cholmleys* caſe.

13. If there be Tenant in tail, the Remainder in tail gꝛants all his eſtate foꝛ the life of Tenant in tail, the Remainder to Queen Eliz. In this caſe, the Remainder to the Queen is void; becauſe the particular eſtate, which ſhould ſuppoꝛt it, is void; foꝛ that it is impoſſible, that the Remainder granted during the life of the Tenant in tail ſhould ever take effect in Poſſeſſion, oꝛ the Gꝛantee enter to have any benefit of ſuch a Gꝛant, and theꝛefoꝛe void: beſides, when the Remainder in tail had granted all his eſtate foꝛ the life of Tenant in tail, it is not poſſible the Queen ſhould take any thing, when all his eſtate was granted away beꝛoꝛe to the firſt Gꝛantee; but in ſuch caſe, the Inheritance in obeyance, &c. Render void.

Co. ibid. b. 4.

Co. l. 4. 19. b. 2. in *Brittridges* caſe.

14. If one ſay, that I. S. is a perjured old knave, and that is to be proved by a ſtake parting the Land of A. and B. Theſe woꝛds by reaſon of the inſenſibility, and impoſſibility of them are not actionable; foꝛ it is impoſſible, that a ſtake ſhould pꝛove any thing. Slander.

Co. l. 5. 8. a. 2. in Juſtice *Windhams* caſe.

15. Regularly, if Land be granted to two and their heiꝛs, they ſhall take joyntly: Howbeit, if a Leaſe be made to an Abbot and a ſecular man, Joynt Grantees ſeverally.

man, or a gift to two men or two women, and the heires of their two bodies begotten; in one case the Possession, and in the other the Inheritance, is severall; because it is impossible, that an Abbot (being a Corporation) should take joyntly with a secular person, or that two men or two women should have Issue of their two bodies, unlesse one of them be an Hermaphrodite.

Payment of money.

16. The payment of a lesse summe at the day in satisfaction of a greater, cannot be satisfaction for all; for that by no possibility a lesser sum can be satisfaction for a greater; but before the day a lesser sum may be taken in satisfaction of a greater, and so may any thing else, as an Horse, Hawke, or the like, upon the day or before the day; because the money paid before the day, or a Horse, Hawke, &c. may be as beneficiall for the party, as if the money had been paid at the day. Co. l. 5. 117. a. 3. in Pinnels case.

The Dutchy of Cornewall.

17. One chiefe reason, to prove the first point in the Princes case (whether or no the Dutchy of Cornewall was to be alwayes in the eldest Son of the King, by the Charter of the 11 of E. 3. or by Act of Parliament confirming that Charter) was; because there were divers priviledges granted him, which could not possibly be granted by Charter, but must of necessity be by Act of Parliament. Vide pl. ibid. Co. l. 8. 16. a. 3. in the Princes case.

Idiot inquirend.

18. A Melius Inquirendum to find, what Land I. S. held of King James at the time of his death, being in the 40. year of Queen Eliz. shall be graunted for the impossibility thereof; for it is impossible, that I. S. should hold any Land of King James in the 40 yeare of Queen Eliz. he being then King of Scotland. Co. l. 8. 168. a. 4. in Paris Slaughters case.

156. *Non cogit ad impossibilia, & Impotentia excusat Legem.*

Shewing a deed.

1. If a Deed remaine in one Court it may be pleaded in another Court without shewing it forth; because he cannot have it out of the other Court, and Lex non cogit ad impossibilia, vide Co. l. 5. 74. b, 4. in Wynnisks case. Co. Inst. part 1. 231. b. 4.

Time.

2. Regularly, where a man doth lesse then the commandment or authority committed to him, there (the commandment or authority being not pursued) the Act is void, and where a man doth that, which he is authorized to doe, and more, there it is good for that which is warranted, and void for the rest, yet both these rules have divers exceptions, and amongst the rest this for one, that if a man be sick, that he cannot go to the Land nor any part thereof to make his claime, and he commands his Servant to do it, and the Servant dare not go to the Land for feare of some bodily hurt; in this case, if the Servant go as neere the Land as he dare, and there make claime for his Master, that shall suffice, albeit his Master bade him go to the Land, because Impotentia excusat legem; for seeing the Master cannot, and the Servant dare not enter into the Land; it sufficeth that he come as neere the Land as he dare. Litt. S. 434. Co. ibid. 258. a. 3.

Descent.

3. Descent shall not take away Entry of a man in Prison at the time of the Descent cast, because he could not make continuall claime, when he was in Prison, being there kept (as it is presumed in Law) in salva & arcta custodia, without intelligence of things abroad. Litt. S. 436. Co. ibid. 259. a. 1.

Nonc.

4. A Descent cast during the vacation of an Abbey, shall not take away the Entry of the next Successor; because, seeing by the death of the Abbot (which is the Act of God) no person is able to make continuall claime, therefore a Descent during that time shall not prejudice the Successor; for, Impotentia excusat legem. Litt. S. 443. Co. ibid. 263. b. 2

Co. l. 5. 22. a. 3. in *Laughters* caſe.

Condition disjunctive.

5. Where the Condition of an obligation is in the diſjunctive, viz. for the Obligor either to do one thing or another, and both the things double at the time of the delivery, and afterwards one of them becomes impoſſible by the Act of God; in this caſe the Obligor is not bound to perform the other; for Impotentia excuſat legem.

Co. l. 5. 115. a. 3. in *Wades* caſe.

Tender of money.

6. If a man be bound to pay 40000 l. at ſuch a day, if he tender it by baggs, it is ſufficient; for it is not poſſible it ſhould be numbred within the compaſſe of one day.

Co. l. 6. 23. b. in *Butler* and *Goodalls* caſe.

Non-reſidence.

7. Lawfull Imprisonment without Covin, the want of a Parſonage Houſe, and ſickneſſe without fraud (when the Incumbent by the advice of his Phiſitian removes for better aire, or the like) are good excuſes for non-reſidence, againſt the Statute of 21 H. 8. 1529.

Co. l. 8. 172. *Hales* caſe.

Tender of Livery.

8. If the Heire holding of the King by Knights ſervice tender his Livery, that includes tender of Homage, and therefore after ſuch tender he may ſell any part of his Land, and if he dyeth before Livery ſued out, the King ſhall not have the profits of his Lands longer then to the time of the Tender; becauſe by his death (which is the Act of God) the ſhewing out of his Livery is become impoſſible, and Impotentia excuſat legem.

Co. l. 9. 73. a. 2. in Doctor, *Hughes* caſe.

Ravishment of Guard, 2. c. 39.

9. A Feme Covert is not within the Statute of Weſtmin. 2. cap. 39. concerning Ravishment of Wards, for the Law, that diſables her to give any thing, wherewithall to ſatiſfie the value of the Marriage, will alſo free her from the puniſhment of Amerciament and Impriſonment: for cauſe it is impoſſible ſhe ſhould ſatiſfie it when ſhe hath nothing to do withall; for, Lex non cogit ad impoſſibilia, &c. vide Max. 34.

Co. l. 10. 139. b. 3. in *Knightlies* caſe.

Wall, and ditch.

10. If a man be bound to repaire a Wall againſt the flowing of the Sea, if it fall into decay by his default and negligence, he ſhall be ſolely charged with the repaire thereof; but if it be overthrown or endamaged by the violence of the water without his fault, by the Stat. of 23 H. 8. they are to be equally charged, who have loſſe by it; for, Impotencia excuſat Legem, vide Pl. ibid.

157. It diſavoureth Falſhood, Fraud, and Covin, *Vide Dyer* 294. 8.

Co. Litt. p. 2. 17. b. 3.

Advowſon pleaded.

1. A man hath an abſolute Inheritance and property in an Advowſon, as he hath in Lands by Rents, yet he ſhall not plead, that he is ſeiſed thereof, In Dominico ut feodo; becauſe that Inheritance, Intereſſe not De domo, cannot either ſerve for the ſuſtentation of him or his Houſhold, neither can any thing be reteined for the ſame for diſcharging of charges, and therefore he cannot ſay, that he is ſeiſed thereof, In Dominico ſuo de feodo: Whereby it appeareth how the Common Law doth deteſt Symmony and all corrupt Bargaines for Preferments to any Benefice, but that Idonea perſona for the diſcharge of the cure ſhould be preſented freely without Expectation of any thing; and the Common Law is ſo tenderous in this point, that the Plaintiff in a Quare Impedit, ſhould recover no Damages for the loſſe of his preſentation, untill the Statute of Weſtminſter 2. cap. 5. And that is the reaſon, that Guardian in Knight-ſervice ſhall not preſent to an Advowſon, becauſe he can take nothing for it, wherein to make Account, for by the Law he can reteine likely nothing, that he cannot account for: ſo in a Writ of Right of Advowſon, the Patron ſhall not alledge the Expiles in himſelfe, but in the Incumbent: For which Reaſons, of an Advowſon a man ſhall plead, that he is ſeiſed, De advocatione ut de feodo & jure.

2. In

False plea in Dower.

2. In a Writ of Dower, if the Tenant (being in by diſcent) plead a falſe Plea, he ſhall anſwer all the damages from the time of the Huſbands death, albeit for ſome part of that time he enjoyed not the Land, nor received any profit thereof: As it appeares in a notable Record between Belfeild and Rowſe, Mich. 8, & 9. Eliz. Rot. 904. in Com. Ba. In which Suite, the Tenant as to parcell pleads non tenure, and for the reſidue detainet of Charters, upon which Pleas they were at Iſſue, and both Iſſues found by the Jury againſt the Tenant, and found further, that the Huſband dyed ſeiſed ſuch a day and yeare, and had Iſſue a Son, and that the Demandant and the Son for ſix yeares, after the deceaſe of the Huſband, together took the profits of the Land, and after the Son ſuch a day and yeare dyed without Iſſue, after whoſe deceaſe the Land diſcended to the Tenant, as Uncle and Heire to him, by force whereof he entred and took the profits, untill the purchaſing of the Originall Writ, and found the value of the Land by the yeare, and aſſeſſed damages for the detaining of the Dower, and coſts of Suit; upon which Words (after much debating) the Demandant had Judgement to recover her damages for all the time from the death of her Huſband, without any defalcation: And this was cheifely cauſed by his falſe Plea, whereas he might have avoyded the anſwering of the damages for the ſix yeares, if he had truly pleaded according to the truth of his caſe. Co. ibid. 33. a. 1.

Aſſignment of Dower by a wrong-doer voidable.

3. If aſſignment of Dower be made by any Diſſeiſor, Abator, Intruder, or any wrong doer, in Lands and Tenements, if they came to that eſtate by colluſion and covin between the Widow and them; albeit the Widow hath juſt cauſe of Action, and the Aſſignment be indifferently made after Judgement by the Sheriff of an equall third part, yet ſhall the Diſſeiſee, &c. avoid it; for, covin (in this caſe) ſhall ſuffocate the right, that appertained to her, and ſo the wrongfull manner ſhall avoid the matter, that is lawfull. See Pl. Co. 51. a. Co. ibid. 35. a. 1. & in *Bredmans* caſe. Co. l. 6, 58. a. 1.

Rent-charge extinct by covin.

4. If a man grant a Rent-charge out of two acres, and after the Grantee recovereth one of the Acres againſt the Grantor by a title Paramount, the whole rent ſhall iſſue out of the other Acre: but if the Recovery be by a faint title by Covin, then the rent is extinct for the whole, becauſe he claimeth under the Grantor. Co. ibid. 148. b. 3.

Forfeiture.

5. If Tenant for life plead covinously, to the diſheriſon of him in the Reverſion, this is a Forfeiture upon Record. Co. Inſt. pars 1. 252. a. 1.

Avowry, Stat. 21 H. 8. 19.

6. The Stat. of 21 H. 8. 19. (which gives to the Lord Avowry upon the lands without naming any perſon certain) being made to ſuppreſs fraud, ſhall be taken with equity. And therefore where the words of the Statute be, If the Lord diſtraine upon the Lands and Tenements holden, yet if the Lord come to diſtrain, and the Tenant chaſe away his Beaſts, which were within view, out of the Land holden, and there the Lord diſtraine; Albeit the Diſtreſſe be (in that caſe) taken out of his fee and Seigniory, yet it is within the ſaid Statute, for in Judgement of Law the Diſtreſs is lawfull, and as taken within his fee and Seigniory; becauſe that Statute being made to prevent fraud and covin admits an equitable interpretation, as aforeſaid: So it is alſo, if his Bayliff do it, tamen quære de hoc, but for Damage-feſant the Diſtreſſe muſt be taken upon the Land, &c. Co. ibid. 268. b. 2. & in the caſe of Avowry, Co. l. 9. 22. a.

Perjury.

7. Perjury (which is a falſehood or fraud in a high degree) is greivously puniſhed by the common Law, And therefore in an Attaint (which is a Writ that lyeth where a falſe Verdict in Court of Record upon an Iſſue joyned by the parties is given) if the petty Jury be attainted of a falſe oath, they are ſtained with perjury, and infamous for ever: for, the Judgement at the common Law impoſeth 8 greivous puniſhments, 1. Quod amittat liberam legem imperpetuum, viz. that they ſhall be infamous for ever, and never be received to be a witneſs, or of a Jury, 2. Ferisfaciant omnia bona & catalla ſua, 3. Terræ & tenementa in manus domini Co. ibid. 294. b. 2.

Regis capiantur, 4. Uxores & liberi extra domos suas ejiciantur, 5. Domus sux prostrentur, 6. Arbores sux extirpentur, 7. Prata sua urantur, 8. Corpora sua carceri mancipentur. And the Law esteemed perjury in this kind the most odious, and inflicteth the greatest punishment thereupon, because the tryalls of all Actions, reall, personall, and mixt, depend upon the oath of twelve men, and prudent Antiquity inflicted a strange and severe punishment upon them, if they were attainted of falsehood and perjury, ut pœna ad paucos, metus ad omnes perveniat; for, there is miserecordia puniens, and there is also crudelitas parcens. But this punishment is altered by the Statute of 23 H. 8. cap. 3.

Co. ibid. b. 3. 8. The Statute of 23 H. 8. cap. 3. (made to prevent perjury and false Verdicts) shall be taken with equity; for, 1. where the Statute saith, that the party greived shall have an Attaint against the party, who shall have Judgement upon the Verdict, yet the Attaint shall be maintained upon that Statute against the Executors of that party: Howbeit, it must be between party and party, 2. In the Kings Bench or Common Pleas, 3. Consider what Pleas may be pleaded in an Attaint by force of that Statute, and what not. Attaint, &c. 23 H. 8.

Litt. S. 675. 9. If a man let Land to a Feme for life, and afterwards one sueth a feined and false Action against the Feme, and recovers the Land against her by default, so as the Feme may have a Quod ei deforceat, according to the Statute of West. 2. cap. 4. The Law gives so much respect to a Recovery, that it workes a Discontinuance, so as the Reverstoner shall not have an Action of Waste, &c. Howbeit, if Tenant for life suffer a common Recovery, or any other Recovery by covin and consent between the Tenant for life, and the Recoveror, this is a Forfeiture of his estate, and he in the Reversion may presently enter for the Forfeiture: See the Statute of 14 Eliz. cap. 8. concerning this matter, and Co. l. 1. 15. Sir William Pethams case, & l. 3. 60. &c. A false Recovery.

Co. ibid. 356. a. 4. & 362. a. 1. & Co. l. 1. 15. b. 3.

Litt. S. 678. 10. If the Baron discontinue the Land of the Feme, and the Discontinuee is disseised, and after the Disseisor lets the Land to the Baron and Feme for life, this is a Remitter to the Feme; but if the Baron and Feme were of covin and consent, that the Disseisin should be made, then is it no Remitter to the Feme, because she is then a Disseiseresse, and particeps criminis: Howbeit, if the Baron were onely of covin and consent to the Disseisin, and not the Feme; in that case, the Feme shall be remitted: So as here, covin and consent of Baron and Feme doth hinder the Remitter of the Feme; and so covin doth (in many cases) choake a meer Right, and the ill manner doth many times make a good matter unlawfull. Conclusion a Remitter.

Co. ibid. 357. a. 4.

Co. ibid. b. 1. Co. l. 3. 78. a. in *Farmers* case. 11. If a Disseisor, Intruder, or Abator do endow a woman, that hath lawfull title of Dower, this is good, and shall bind him that right hath: but if a woman be lawfully entitled to have Dower, and she is of covin and consent, that one shall disseise the Tenant of the Land, against whom she may recover her lawfull Dower, all which is done accordingly: In this case, the Tenant may lawfully enter upon her, and avoin the Recovery in respect of the covin.

Co. ibid. b. 2. 12. In all cases, where a man hath a rightfull and just cause of Action, yet if he of covin and consent do raise up a Tenant by losing, against whom he may recover, the Covin doth suffocate the right, that the Recovery (though upon good title) shall not bind, or restore the Demandant to his right: So if Tenant in tail and his Issue disseise the Discontinuee to the use of the Father, and the Father dyeth, and the Land descendeth to the Issue; in this case, the Issue is not remitted against the Discontinuee, in respect he was privy and party to the wrong, but in respect of all others he is remitted, and shall derayigne the first Warranty: And so note, a man may be remitted against one, and not against another. The like.

13. A.

The like. 13. A. and B. Joint-tenants are intitled to a reall Action against the Heire of the Disseisor, A. causeth the Heire to be disseised, against whom A. and B. recover and sue execution; In this case, B. is remitted, for that he was not party to the Covin, and shall hold in common with A. but A. is not remitted, causa qua supra. Co. ibid.

False Plea. 14. He that will have the benefit of the Statute of Glocester, cap. 3. 6 E. 1. must plead the truth of his case, viz. the Warranty, acknowledge the title of the Demandant, and pray, that the advantage of the Statute may be saved to him; and then if afterwards assets descend, the Tenant upon this Record shall have a Scire facias, &c. But if the Tenant plead the Warranty, and plead further, that assets descended, &c. and the Demandant taketh Issue, that assets descended not, &c. which Issue is found for the Demandant, whereupon he recovereth; In this case, the Tenant, albeit assets do afterwards descend, shall never have a Scire facias upon the said Judgment; for that by his false Plea he hath lost the benefit of the Statute. Co. ibid. 366. a. 3. & Co. l. 8. 53. a. 3. in *Sims* case.

Outlawry by covin. 15. Imprisonment is a good cause to reverse an Outlawry, if it be by Process of Law in invitum; but if it be by consent and covin, such Imprisonment shall not avoid an Outlawry, because upon the matter it is his own act. Co. Inst. part 2. 259. b. 2.

Estoppel. 16. Where the Tenant hath notice, that the Seigniory was granted but to one, or that the Reversion was granted but of one Acre, or that the Reversion was granted for fewer years, or that the Reversion was granted for life onely with no Remainder over, whereas it was in any of the cases otherwise; in such case, generall Attornement without true notice of the Grant is void; for the usuall pleading (which intent is the rules of the Law) is, to which Grant he attorned, and therefore if he hath not notice of the Grant, or (which is all one) true notice thereof, the assent, which he gives to it (which in truth is but part of the Grant) the Law (which abhors falsehood) will not construe to be Attornment to the true Grant. Co. l. 2. 68. a. 2. in *Tookey* case.

Not by covin, nor bar. 17. A man possessed of divers parcells of Land within the Manor of D. whereof some he holds for years, others at will, others by copy, and some also in fee, demiseth the whole to another for life, and then levies a Fine to the Tenant for life and his Heires of so many Acres as amount to the whole Land, continues Possession, and payes the rents to the Lord, five years passe; yet (in this case) the Lord is not barred by the Statute of 4 H. 7. cap. 24. For the makers of that Statute did never intend that such a Fine levyed by fraud and practice of Tenant for years, at will, or by copy, which pretend no title to the Inheritance, but intend the disherison of their Lessors or Lords, should bar them of their Inheritance, and this appeares by the preamble of the said Act, where it is said, that Fines ought to be of greatest strength to avoid strifes and debates: but when Tenant for years, at will, or by copy, make Feoffment by assent and covin, that a Fine should be levyed, this is not to avoid strife and debate, but by assent and covin, to begin and stir them up; And therefore that Statute did not intend to establish any such estate made and created by such fraud and practice, which (being fraudulent) is (upon the matter) no estate at all, &c. vide pl. ibid. Co. l. 3. 77. b. 2. in *Farmers* case, & in *Margaret Podgers* case. Co. l. 9. 104. b. 1.

Fraudulent gift of goods. 18. The grant of goods, albeit it be made upon good consideration, yet if it be not bona fide, but hath trust in it, or other badges of fraud, as if the Grantor keep them still in his own Possession, useth them as his own in disposing of them, or otherwise, or if they be Sheep, and the Grantor brand them with his own mark, or when he grants all his Goods and hath not except so much as his wearing apparrell, or the like; such a Grant is within the Statute of 13 Eliz. 5. and upon a Fieri facias at anothers Suit, the Sheriff may seise them, as if no Grant at all had Co. l. 3. 80. b. 4. in *Twines* case.

Co. ibid.

Litt. S

Litt

Uery-

tion

tion was diuided vp purpoſt to euade the Statute, that hath been all meere vsury bargain and contract within the Statute.

ury. 24. A. lends B. 100 l. to pay 20 l. for the Loan of it for one yeare, if the ſonne of A. ſhall be then liuing, this is vſury within the ſtatute, for if this ſhall be out of the ſtatute, by reaſon of the vncertainty of the life, the ſtatute will be of little effect, becauſe, by the ſame reaſon that hee may adde vnto his life, he may adde vnto, and ſo he may euade the Statute at pleaſure, that Vſury being like a Mathematicall line, viz. Diuiſibilies in indiuiſibili. Co. ibid. per *Popham.*

lſe deed. 25. If a Deed be pleaded and ſhewen in Court, and denyed, then it ſhall alwaies remaine in Court, to the end that if it be found not his Deed, it ſhould be damned for the falſity thereof. Co. ib. 74. b. 4. in *wymarkes* caſe.

ſudulent nveyances. 26. The Statute of 11 H. 8. 9. being made to ſuppreſſe Fraud and Deceit, ſhall be taken and conſtrued beneficially; And therefore whereas the words of that Statute are, that where Tenant for life or yeares have demiſed or granted, to the intent, that thoſe in Reuerſion, (viz. their Heires, their Aſſignes) ſhould not know their names, and afterwards the firſt Tenants continually occupy the Lands, &c. and make Waſt, &c. It is ordained, &c. that he in Reuerſion (in ſuch caſe) ſhall maintain a Writ of Waſt againſt the ſaid Tenants for life or yeares, yet every Aſſignee of the firſt Leaſe mediate or immediate is within the ſayd Act, albeit not therein mentioned: And he in Remainder is within the Act, as well as he in Reuerſion, albeit only in the Preamble and Body of the Act, there is only mention made of him in Reuerſion. Co. ibid. 97. & 4 th *Beeches* caſe.

ofits. 27. If Feoffee for Tenant prayes aide in Aſſiſe, the Defendant ſaith, that he hath made a Feoffement to yet this inſtant with purpoſe to defraud him of his Tenancy, and will take the profits; In this caſe, the Tenancy of the poſſeſſion, alſo that the Feoffment is traueſtible, 4 H. 7. 9. Co. 1. 44. b. 2.

ranty. 28. The Father Tenant for life, Remainder to the Son, leaſes for yeares to A. with a deſigne to bar the Son, A. enfeoffs B. to whom the Father releaſeth with Warranty, and dies; In this caſe the Son is not barred by this Warranty, being a Warranty, that begins by diſſeiſin, for albeit it is ſaid in our bookes (and true it is) that Warranty is much favoured in Law, becauſe it extends to eſtabliſh him, that is the Poſſeſſion in poſſeſſion, yet when Warranties are met with Couin, (which is ſo odious and ſo much abhorred in Law) they looſe not only their favour but ſight alſo, for Couin is like poiſon, that infects every good thing, with which it is mixt, &c. Co. l. 5. 80. b. 2.

eigned ar-ſt. 29. The Iudiciary of ſeigned Actions in the Chancery, upon pretence alledged vpon the Serjeants bee the Priſoner in their Cuſtody to charge him with a Capias ad ſatisfaciendum, (to prevent an eſcape vpon the Capias) was condemned by all the Court of Starre Chamber in the Counteſſe of Rutlands caſe; becauſe by the colour of Law and Iuſtice, they by ſuch feigned meanes do contrary to Law and Iuſtice, and ſo cauſe Law and Iuſtice to be the Author of wrong and Injuſtice. Co. l. 6. 54. b. 2. in the Counteſſe of *Rutlands* caſe.

liſin of rent. 30. If A. having a Rent ſeck iſſuing out of the Manor of D. grants vnto him, but no ſeiſin thereof, plots with B. to diſſeiſe the Tenant, to the end, that after ſuch diſſeiſin B. may giue him ſeiſin of the Rent, this ſeiſin ſhall not bind the diſſeiſee, or he that right hath, for the Couin makes it vnlawfull. Co. l. 6. 58. a. 1. in *Bredimans* caſe.

ndulent aſes. 31. The Father leaſes by Fraud, and dyes, the Son knowing of it (or not) ſeis the Land; in this caſe the Widow ſhall auoid thoſe Leaſes, by the Statute of 27 Eliz. 4. ſo it is alſo where the Father leaſes to the Son, who aſſignes fraudulently, and then ſells the Land. &c. Co. l. 7. 2. b. in *Burrells* caſe.

lſe Deed. 32. If a man deny the Deed of his Anceſtor, or plead a Deed made by his Anceſtor, and it is found againſt him, yet he ſhall not be diſeiſ- Co. l. 8. 60. a. in *Beechers* caſe.

but

but onely amerced, quia de alieno delicto, &c. But if the Tenant or Defendant plead a falſe Deed made to him, or deny his own Deed, and it is found againſt him, or if he relicta verificatione cognoſcit actionem, he ſhall be fined for his falſity, quia certi debemus eſſe de proprio facto.

Co. l. 8. 127. a. 1. in the City of *Londons* caſe. Inward ſhop.

33. Where the cuſtome is, that no Forraigner ſhall ſell in any open Shop, in paine to be fined, he is a greater offender that trades there in an inward Shop or Chamber; for ſuch places are more dangerous and offenſive then outward Shops, becauſe they may there uſe deceit, and are not ſubject to ſearch: Qui male agit odit lucem, & omnia delicta in aperto leviora ſunt. See there likewiſe the caſe of the Prior of Dunſtable to the like purpoſe.

Co. l. 8. 134. *Mary Shipleys* caſe. Executor, aſſets.

34. If an Executor plead pleni adminiſtravit, and aſſets be found by the Jury in his hands, they ſhall pay the debt, as far as they will anſwer, but if they come ſhort, he ſhall anſwer the damages of his own goods, for his falſe Plea.

Co. l. 9. 17. b. 1. in *Ann Bedingfields* caſe. Co. ibid. 19. a. 3. Rebutter in Dower.

35. If a Feme having title of Dower do deceitfully detaine the Charters which concerne the Lands, out of which ſhe is to have Dower aſſigned, that is a good rebutter of the Action in a Writ of Dower brought by her againſt the Heire: So if ſhe deceitfully conceale and detaine the heire, the Guardian in Chivalry may plead it againſt her in bar of her Dower: but he cannot plead detainer of Charters, which concerne the heire: becauſe they ſhall not be delivered to him.

Co. l. 9. 20. b. 4. in the caſe of Avowry. Avowry.

34. The Law will never ſuffer falſehood to ſuppreſſe truth: and therefore, if there be Lord and Tenant by Fealty and Rent, and the Tenant make a Leaſe for years, and the Lord diſtraines (when there is no Rent or Services behind) the Cattell of the Tenant, and avowes upon a meere ſtranger, as his true Tenant, with purpoſe to charge the Plaintiff unjuſtly: In this caſe, the Leſſee upon ſhewing the whole matter in ſpeciall, may pray in aid of the Leſſor; and ſhall thereby compell the Lord to avow upon the Leſſor, as his true Tenant, and the falſe Avowry of the Lord upon the ſtranger, who is not Tenant, ſhall not eſtop the Leſſee againſt the truth of his caſe, quia veritas nihil veretur niſi abſcondi.

Co. l. 10. 110. a. 2. in *Arthur Legats* caſe. Void Patent upon falſe ſuggeſtion.

35. A falſe ſuggeſtion in the Kings Grant (being the words of the Patentee) makes the Patent void: As where the King grants fifteen Acres of Land, as concealed, whereas they being parcell of a Manor, the profits thereof are duely anſwered to the King, though occupyed by an Intruder, yet becauſe they are onely detained and not concealed, but ſuggeſted onely to be concealed, the Patent is void: So in 19 E. 3. tit. grant 58. The King by his Letters Patents gives licence to appropriate the Advowſon of D. to the Prior of C. Quæ quidem advocatio non tenetur de nobis, &c. and in truth the Advowſon was held of the King, and the licence was held void, for the Book ſaith, that the ſuggeſtion was falſe: And in 21 E. 4. 48, if the King grant the Manor of D. &c. Quod quidem manerium ad manus noſtras devenit ratione eſchetæ, &c. and in truth the Manor did not come to the King by eſcheat, in this caſe alſo the Grant was void, and the reaſon that Huſſey alſo Juſtice there gives is, for that, the falſehood comes of the ſurmiſe of the party.

Co. l. 11. 73. b. 4. & 74. a. 4. in *Magdalen Colledge* caſe. The Like.

36. A Grant to the Queen by the Maſter and Fellowes of Magdelen Colledge in Cambridge, of an Houſe in London rendring 15 l. per annum, Rent, upon Condition, that ſhe ſhould re-grant it to Benedict Spinola Merchant Denizen, and his heires, was adjudged void, becauſe they made uſe of the Queens Prerogative to alien the Lands of the Colledge, which they were prohibited to do by the Statute of 13 Eliz. within which Statute the Queen is included: So if one intending to ſell his Land, had by Fraud conveyed it by Deed inrolled to the Queene, with purpoſe

ſo

to deceive the Purchaſor, and after he ſels the Land for a valuable conſideration, and makes conveyance accordingly, in this caſe, the Purchaſor ſhall enjoy the Land againſt the Queen by the Statute of 27 Eliz. 4. for albeit the Queen is not excepted, yet the act being generall, and made for ſuppreſſing of fraud, ſhall bind the Queen, &c. vide pl. ibid.

covin in-
feoffment.
recovery.
remitter.

37. In Trin. 19 H. 8. fo. 12. Br. Remitter 1. If one diſſeiſe the Diſcontinuee in tail by covin, to the intent to enfeoff the Iſſue in tail within age, who had no knowledge of the covin, he enfeoffs him accordingly: in this caſe (by the better opinion) the Iſſue in tail ſhall not be remitted, notwithſtanding his good title, and the onely cauſe hereof is the covinous intent, for covin may alter the matter, where the title is good: ſo if my Anceſtor diſſeiſe me, to the intent to make Feoffment with warranty to bar me: here, albeit the Warranty be made twenty moneths after, yet this Warranty begins by Diſſeiſin, ſo the intent maketh the act to enure otherwiſe then it would do: for when covin is mixt with the truth, it makes all unſavory: So in Wimbiſh and Talboies caſe in the Com. Eliz. Talbois joyning by covin with W. Talbois in being taken by nihil dicit, he was to loſe her eſtate by force of the Stat. of 11 H. 7. and the Iſſue in tail might before that Statute falſifie a feined Recovery by covin. Pl. Co. 81. a. in *Wimbiſh* and *Talboies* caſe, & ibid. 54. b. 4.

38. The 11 H. 7. 20. and all other Statutes made for the ſuppreſſing of fraud ſhall be extended by equity: the words of the Statute of Marlebridge cap. 6 are, dè his, qui primogenitos & hæredes ſuos infra ætatem exiſtentes feoffare ſolent, and yet if the firſt be dead, and he enfeoff his ſecond Son, which is his heire, that is within the equity of the Statute, or if he levy a Fine to him, which is matter of Record, that is alſo within the equity of the Statute, albeit the Statute ſpeaks of Feoffment: And the reaſon is, becauſe covin is alwayes abhorred in our Law, and Statutes made for the ſuppreſſion thereof, are made for the publick good, and therefore ſhall be extended by equity: In like manner, 1 H. 7. cap. 1. which gives a Writ of Formedon in Remainder againſt the perner of the profits, was made for the ſuppreſſion of covin, for a Feoffment made to perſons unknown to defraud thoſe that right had, was great covin and deceit in the Law, and therefore a Scire facias to execute a Remainder ſhall be maintainable againſt the perner of the profits, as it is adjudged in 14 H. 7. fo. 31. And to theſe Statutes and the like made for the ſuppreſſion of fraud and covin are alwayes to be extended by equity, and to have a favourable interpretation and conſtruction: And therefore the Statute of 32 H. 8. cap. 9. ſhall be alſo extended by equity, being ordained for the ſuppreſſion of fraud and covin in buying of pretenced titles, ſo that Leaſes for years as well as higher eſtates ſhall be intended by it. Pl. Co. 81. b. 4. in *Partridge* and *Stranges* caſe. Co. l. 5. 80. a. in *Fitzherberts* caſe.

warranty.

39. The Father Tenant for life, the Remainder to the Son and Heire apparent in tail, Leaſes to A. for years with intent, that A. ſhould enfeoff B. unto whom the Father ſhould releaſe with Warranty, all which is done accordingly: This is a Warranty, that commenceth by Diſſeiſin; for, albeit the Warranty be not made at the time of the Diſſeiſin (which was upon the Feoffment to B.) yet (by conſtruction of Law) it ſhall be adjudged to be Warranty, that begins by Diſſeiſin by reaſon of the practice and covin betwixt the confederates: for if the Father had made the Feoffment to B. with Warranty and had dyed, this Warranty had barred the Heire, &c. vide pl. ibid.

attaint.

40. A falſe Verdict is a contradiction in it ſelfe, and ſo odious in the Law, that in an Attaint, Outlawry in the Plaintiff cannot be pleaded in diſability of the perſon. Co Inſt. part 1. 128. 4.

41. The Statute of 31 Eliz. 6. to prevent Simonie is to be largely expounded, though penall. The King againſt the Biſhop of Norwich. Hob. 75.

158. *Jus & Fraus numquam Cohabitant.*

Co. l. 10. 45. a. 4. in *Jennings* his case.

1. The Statute of 14 Eliz. cap. 8. doth not extend to preserve any Reversion or Remainder expectant upon an estate taile, or where the Tenant for life is impleaded, and Tenant in tail is vouched; for, the title of the Act is, For avoiding of Recoveries suffered by collusion by Tenant for life, &c. but a Recovery cannot be said to be by collusion, where Tenant in tail is in the Recovery, either Tenant in Fait or Tenant in Law, as Voucher; for the Law (as an incident to his estate) hath made the Land and all Remainders and Reversions subject to his pleasure, and he hath right and power to bar them all, and Jus & Fraus numquam Cohabitant; And therefore the title of the Act being, For avoyding of Recoveries by collusion, &c. it cannot extend to a Recovery, where Tenant in tail is party or privy. Recovery by Tenant in taile.

Pl. Co. 51. a. 2. in *Wimbish* and *Talbois* case.

2. When truth is mixed with covin (that wicked hearb) or covin with truth, that conjunction and mixture makes all bitter and unsavory, and goodnesse is perverted into wickednesse, for they cannot continue together, no more then fire and water. Truth. Cas.

Dyer. 55. 9. 35 H. 8.

3. A Verdict is said to be veri dictum, which ought to have truth in it, and no semblance of fraud or partiality to either party; And therefore if a Jury before their agreement, eat or drinke at the charge of either of the parties, it is good cause of Error to reverse the Judgement upon such a Verdict, for there cannot be truth in such a Verdict, which hath such a badge of fraud and falsehood, because such practice implyes partiality and suspition. Verdict, &c.

159. *Quando aliquid prohibetur fieri, ex directo prohibetur & per obliquum.*

Litt. S. 361. Co. 1. 86. b. pars 1. 223. a. 4.

1. If a Feoffment in fee be made upon Condition, that the Feoffee shall not enfeoff I. S. or any of his Heires or Issues, &c. this is good; for he doth not restraine the Feoffee of all his power; howbeit if he enfeoff I. N. with intent and purpose, that he should enfeoff I. S. sans fait, that it is a breach of the Condition: So if a Feoffment be made upon Condition, that the Feoffee shall not alien in Mortmaine, this is good, because such alienation is prohibited by Law, and (regularly) whatsoever is prohibited by Law, may be prohibited by Condition; but (in this case) if the Feoffee enfeoff I. S. with intent, that he shall alien the Land in Mortmaine, it seemes to be a breach of the Condition: In ancient Deeds of Feoffment in fee there was usually this clause, Quod licitum sit donatorio rem datam dare vel vendere cui voluerit, exceptis viris religiosis & Judæis. A Feoffment upon Condition, that the Feoffee shall not alien.

Co. ibid. 282. a. 3.

2. In an Action upon the case, the Plaintiff declared for speaking of slanderous words (which is transitory) and laid the words to be spoken in London. the Defendant pleaded a Concord for speaking of words in all the Counties of England, save in London, and traversed the speaking of the words in London; the Plaintiff in his replication denyed the Concord, whereupon the Defendant demurred, and Judgement was given for the Plaintiff; for the Court said, if the Concord (in that case) should not be traversed, it would follow, that by a new and subtile invention of pleading, an ancient Principle in Law (that for transitory causes of Action the Plaintiff might allege the same in what place or County he would) should be subverted, which ought not to be suffered, and therefore the Judges of both Courts allowed a Traverse upon a Traverse in that case: And the wisdome of the Judges and Sages of the Law have alwayes Innovation prohibited.

alwayes suppressed new and oblique inventions in derogation of the common Law: whereupon it is said by the Judges in one Book (38 E. 3. 1.) we will not change the Law, which hath been alwayes used, and another saith (2 H. 4. 18.) it is better that it be turned to a default, then the Law should be changed, or any innovation made.

Warranty that begins by Disseisin by an oblique grant.

3. The Father Tenant for life, the Remainder to the Son and Heire apparent in tail, Leases to A. for years with purpose, that A. should enfeoff B. unto whom the Father should release with Warranty, all which is done accordingly; this is a Warranty that begins by Disseisin; for albeit the Warranty be not made at the time of the Disseisin (which was upon the Feoffment to B.) yet by construction of Law it shall be adjudged to be Warranty, that begins by Disseisin, this Warranty binds not, because of the covin. Co. l. 5. 80. a. 2. *Fitzherberts* case.

a oblique ne de Colge Lands, id.

4. The Master and Fellowes of Magdalen College in Cambridge, grant an House in London to Queen Eliz. upon Condition that she within three moneths should convey it to Benedict Spinola and his Heirs, who doth so accordingly; this Grant of the College is void by the Statute of the 13 Eliz. 10. and was not helped by the Statute of Confirmation of the 18 Eliz. 2. for it appeared, that the intent of the Master and Fellowes was, that they should convey the said House to Benedict Spinola and his heires; and therefore that which they could not do de directo, they attempt to do ex obliquo, to grant it to the Queen and her Successors, but upon Condition contained in the same Grant, that the Queen within three moneths should grant the House to B. Sp. and his Heires, so as it was by this device endeavoured, that the Queen, who was the Fountaine of Justice, should be made an Instrument of injury and wrong, and of the violation of a pious and excellent Law, which she her selfe had made for the maintenance of Religion, advancement of learning, and sustenance of poore people. Co. l. 11. 73. b. 1. in *Magdalen Colledge* case.

s like.

In 17 E. 3. fo. 59. The Fryers Carmelites (who had not then any place of habitation) obtaine of one John Merite, who was seised of ten Acres of Meadow holden of the Bishop of Winchester, to have the said ten Acres of Meadow, for a place of habitation for them, and because John Merite could not grant unto them the ten Acres by reason of the Statute of Mortmaine, by covin contrived betwixt Merite and the Fryers to oust the Bishop of his Seigniory, Merite (to evade the Statute of Mortmaine) grants the ten Acres to the King, his Heirs and Successors, whereby the Bishops Seigniory might be extinct, to the end that the King should grant them over to the Fryers, which he did accordingly: Howbeit, because here there was a practice betwixt Merite and the Fryers to take away the Bishops Seigniory, it was adjudged, that the Charter should be repealed, and that the Carmelites should be distrained to deliver it to be cancelled. Co. ibid. b. 4.

ds purased with Kings cy.

6. In Term. Trin. 24. E. 3. Rot. 4. in the Exchequer, one Walter Chirton, the Kings Customer, had purchased certaine Lands with the Kings money, and by covin had caused the Vendor to enfeoff his freinds in fee to defraud the King, and yet nevertheless took the Issues and profits of the Land to his own use, and those Lands were by inquisition returned with the values into the Exchequer, and there by Judgement were seised into the Kings hands, untill, &c. for albeit the estate of the Land was never in Chirton, yet the taking of the estate in the name of others, and he in the meane time receiving the profits thereof, was all one, as if he had taken the estate in his own name, especially in the Kings case, and the lands being bought with the Kings money. Co. l. 11. 91. b. 4. in the Earle of *Devonshires* case.

Dulente luente.

7. One Verney in the 34 H. 6. being in execution in the Fleet for divers debts, as also for Fines to the King returned into the Exchequer, caused himselfe to be indicted of Felony, with an intent Dyer 245. 65. 8. Eliz.

to confeſſe it and to have his Clergy, and ſo to be out of the temporall Law, and then to have his purgation, and all this with purpoſe to defraud his Creditors, &c. Anyupon a Corpus cum cauſa, all was removed into the Kings Bench; Howbeit the King having notice of the Fraud, by a privy Seale commands the Juſtices to ſtay the Arraignment, &c.

160. *Rectum eſt index ſui & obliqui.*

Co. l. 10. 24. b. 2. 1. In the Caſe of Suttons Hoſpitall Sir Edward Coke excuſeth himſelfe from anſwering the Objections in that caſe at large, (being, as he ſaith, for the moſt part of no great moment) by producing manifeſt and infallible proofs of the validity of that Incorporation; alleadging this Maxime for the ground thereof, Rectum & index ſui & obliqui. Excuſe to anſwer objections.

Dyer 234. 16. 7. El. 2. In a Formedon in Deſcender, a Fine with Proclamations 18 Hen. 6. was pleaded in Bar, and the iſſue being upon Nul tiel Record, at the day the Tenant had the Return, but in the Proclamations, viz. 5, 6, 7, 8. made in Trin. Terme, the yeare of the King was omitted; Howbeit becauſe in Eaſter Terme before, and Michaelmas Terme after, 30 H. 8. was expreſſe, of neceſſity it did follow, that the ſaid ſeaſe Proclamations were alſo made in the ſame yeare, for they being right, by conſequence the others were right alſo; And thereupon it was held, that he had not failed of the Return. Formedon.

161. It diſavoureth Improbabilities.

Co. Inſt. p. 1. 25. b. 4. Co. l. 10. 50. b. 1. in *Lampets* caſe. 1. If Lands be given to a man and a woman being not his wife, and to the heires males of their two bodies, they have an Eſtate Taile, albeit they be not married at that time, ſo it is alſo, where Lands are given to a man, which hath a wife, and to a woman, which hath a husband, and the heires of their two Bodies, they alſo have preſently an Eſtate Taile for the poſſibility that they may marry: But if Lands be given to two Husbands and their Wives, and to the heires of their Bodies begotten, they ſhall have a joynt Eſtate for life, and ſeverall Inheritances, viz. The one Husband and Wife the one Moiety, and the other Husband and Wife the other Moiety, and no ſuch Remainder or other poſſibilities (for the improbability thereof) ſhall be allowed in Law, where it is once ſetled and takes effect; ſo likewiſe if Lands be given to a man and two women, and the heires of their bodies begotten, in this caſe, they have a joynt Eſtate for life, and each of them a ſeverall Inheritance, becauſe they cannot have one Iſſue of their bodies, neither ſhall there be by any conſtruction a poſſibility upon a poſſibility, (for the Improbability thereof) viz. that he ſhall marry the one firſt and then the other: The ſame Law it is alſo, when Land is given to two men and one woman, and to the heires of their Bodies begotten. Lands limited.

Co. l. 2. 51. a 4. in Sir *Hugh Cholmeleis* caſe. in *Magdalen Colledge* caſe. Co. l. 11. 70. b. 3. 2. A remote poſſibility is never intended by Law; And therefore where A. was Tenant in Taile, Remainder in Taile to B. B. grants all his Eſtate to C. for the life of A. this Grant is void, becauſe it is impoſſible it ſhould ever take effect; and whereas (in that caſe) it was objected that A. might enter into Religion and be profeſt, whereupon the Grantee might enter and enjoy the Land, during the naturall life of A. it was anſwered and reſolved, That that was a Forreigne poſſibility, and not probable nor imaginable in Law, for a poſſibility which makes a Remainder good, muſt be Potentia propinqua a common poſſibility, and not Potentia remota: And therefore a Remainder will not lie in a Remainders improbable take effect.

thing

thing or perſon that is not in Eſſe, at the time of the Grant made, unleſs at the ſame time there be Potentia propinqua, or a pregnant probability that it may take effect; as a Remainder granted to a Corporation, not in being at the time of the Grant made, is void, albeit the Corporation be erected afterwards during the particular Eſtate, becauſe that is Potentia remota, and improbable; But if a Leaſe be made for life, the Remainder to the right Heirs of *I. S.* this is good; for by common poſſibility that I.S. may dye, during the life of Tenant for life, and untill he dye, his Heires are to him; Howbeit if at the time of the limitation of the Remainder, there be no ſuch perſon as I.S. but during the life of Tenant for life I.S. is borne and dyes, his Heir ſhall never take it, as it is agreed in 2 H.7.13. So likewiſe in 10 E.3.46. upon a Fine levied to R. he grants and renders to I. and Florence his Wife for life, the Remainder to G. the Son of I. in taile, the Remainder to the right Heires of I. and in truth at the time of the Fine levied I. had not any Son named G. but after had iſſue named G. and dyed; In this caſe, G. could not take the Remainder in Taile, becauſe he was not borne at the time of the Fine levied, for when I. had not then any Son named G. the Law doth not expect that he ſhall have a Son named G. after, for that is improbable, and Potentia remota, &c. 2 H. 7. 13. 10 E. 3. 46.

Obligation payable before Iſſues. 3. Debt due by Obligation ſhall be payd by an Executor before a Statute acknowledged for the performance of Covenants, when none of them are, or perhaps will ever be broken, but are things in contingency & Futuro, and therefore ſuch a poſſibility, which peradventure will never happen, ſhall not barre preſent and due debts by Obligation, or other ſpecialties. Co. l. 5. 28. b. *Harriſons* caſe.

Contingency. 4. When a man by Indenture limits Lands to himſelfe for life, Remainder to another in taile, Remainder to his right Heirs with power to make Leaſes for Life, Lives, or Yeares, without any reſtraint of Lives or Yeares, and further to the uſes to be expreſt in his laſt Will, or to the uſe of ſuch perſon or perſons, unto whom he ſhal by his laſt Will deviſe any Eſtate or Eſtates thereof: In this caſe, the Eſtate in Taile is incontingency, for by thoſe or the like words he may devile the Land to any perſon in Taile or in Fee: And therefore, becauſe it is very improbable, that the Eſtate tail may ever take effect, it ſhall not (in this caſe) preſently veſt by the Statute of 27 H.8. but ſhall be ſaid to be in contingency, ſo as, if he by ſuch power alter not the Eſtates ſo limited, it may happen to take effect, but if otherwiſe, it will vaniſh and come to nothing, Vide ibidem. Co. l. 10. 85 a. 2. in *Leonard Lewes his* caſe.

lar to an Action. 5. In Bar to an Action for Treſpaſſe in 300 acres of common field Land, or Downe, the Plaintiff to frame himſelfe a Title alledgeth in his Barr, that A. (from whom he derived his Eſtate) was ſeiſed of the ſcite of the Manor of Dale, whereof the ſaid 300 acres were parcell, and this Barr was adjudged inſufficient for the Improbability, that ſo much Land ſhould be parcell of the ſcite. *Dyer* 171. 9. 1 2. Eliz.

162. Uncertainties, by which the truth may be inveigled.

lain. 1. If a man do enfranchiſe a Villain Cum tota ſequela ſua, that is not ſufficient to enfranchiſe his children borne before, for the uncertainty of the word Sequela. Co. Inſt. part 1. 3. a. 4.

ires. 2. If a man gives Lands to one, to have and hold to him or his heirs, he hath but an Eſtate for life for the uncertainty; ſo if a man give Land to two, to have and to hold to them two Et heredibus, omitting Suis, they have but an Eſtate for life for the uncertainty. Co lib. 8. b. f. 22 H. 6. 15.

3. To

Co. ibid. 9. a. 2. and Co. ibid. 20. b. 1.

3. To avoid uncertainty, which is commonly the Mother of contenti- on and confuſion, the Law doth appropriate to it ſelfe certaine words (which may be termed Vocabula artis) to expreſſe diverſe things, which cannot ſignificantly be expreſſed by any other words, or by any Periphraſis or circumlocution without them, as the word Heires for the diſcent of Inheritance, which doth not only extend to his immediate heirs, but to his heires remote, and moſt remote, born and to be borne, Sub quibus vocabulis, *heredibus ſuis*, omnes hæredes propinqui, & remoti, nati & naſcitari. And Hæredum appellatione veniunt hæredes hæredum in infinitum, ſaith Fleta, lib. 3. cap. 8. So likewiſe, the Law uſeth peculiar words for Tenures, Perſons, Offences, Formes of Originall Writs, Warranty, Exchange, &c. and all this to procure certaine expreſſions, and to prevent uncertainty for the reaſon aforeſaid. *Vocabula artis.*

Co. ibid. 20. b. 1.

4. If a man give Lands to A. Et hæredibus de corpore ſuo, the Remainder to B. In forma predicta, this is a good Eſtate Taile to B. for that the words, In forma predicta, do include the other; but if a man let Lands to A. for life, the Remainder to B. in Taile, the Remainder to C. In forma predicta, this Remainder is void for the uncertainty. A grant void.

Co. ib. 34. b. 1.

5. In Dowment Ad oſtium eccleſiæ, to the end it may have certainty, which is the Mother of quiet and repoſe, and to avoid after contention, the Law requireth, that it be done openly, and may be aſſigned in certainty, to be enjoyed diſtinctly by it ſelfe, and not in Common. Dowment *ad oſtium eccleſiæ.*

Co. ibid. 37. a. 3. & Co. ibid.

6. In all caſes where the demand of Dower is certaine, as in caſe of Dower Ad oſtium eccleſiæ, or Ex aſſenſu patris, There the wife after the death of her Husband may enter; but where the demand is uncertaine, as in Writs of Dower at the Common Law, there albeit the thing it ſelfe be certaine, yet ſhall ſhe not take it without Aſſignment, as if a woman bring a Writ of Dower of three ſhillings rent, albeit ſhe ought to be endowed of one ſhilling, yet cannot ſhe after Judgement diſtraine for 12 d. before Aſſignment, becauſe the demand was uncertain: So it is if two Tenants in Common be, and the wife of one of them bring a Writ of Dower to be endowed of a third part of a moiety, and have Judgement to recover, yet cannot ſhe enter without aſſignment, albeit the Aſſignment cannot give her any certainty, becauſe her Husbands Eſtate was uncertaine: So if a woman bring a Writ of Dower of ſix pounds Rent-charge, and ſhe hath Judgement to recover the third part, albeit it be certaine, that ſhe ſhall have forty ſhillings, yet ſhe cannot diſtrain for forty ſhillings, before the Sheriff do deliver the ſame unto her: It is otherwiſe, where a Writ demands Land, Rent, or other things in certaine; for there the Demandant after Judgement may enter and diſtraine before any Seiſin delivered to him by the Sheriff upon a Writ of Habere facias ſeiſinam, &c. Aſſignment *of dower.*

Co. ibid. 54. b. 3.

Co. ibid. 45. b. 2.

7. If a man make a Leaſe for ſo many yeares as he ſhall live, this is voyd for the uncertainty. Leaſe void.

Co ibid. 45. b. 4.

8. If the Parſon of D. make a Leaſe of his Gleab for ſo many yeares as he ſhall be Parſon there, this cannot be made certaine by any meanes; for nothing is more uncertain then the time of death, Terminus vitæ eſt incertus, & licet nihil certius ſit morte, nihil tamen incertius quam hora mortis: But if he make a Leaſe for three yeares, and ſo from three yeares to three yeares, ſo long as he ſhall be Parſon, this is a good Leaſe for ſix yeares, if he continue Parſon ſo long, viz. Firſt, for three yeare, and after that for three yeares, and for the reſidue uncertaine. The like.

Co. ibid. 49. b. 2. and Co. ib. 358. 3.

9. If A. be to make a Feoffment to B. and C. and their heires without Deed, and A. makes Livery to B in the abſence of C. in the name of both, and to their heires, this Livery is void to C. becauſe a man being abſent, cannot take a Freehold by a Livery, but by his Attorney lawfully authoriſed by Deed to receive Livery, unleſſe the Feoffment Livery.

be

be made by Deed, and then the Livery to one in the name of both, is good, and the reason hereof seems to be, because the Feoffment being made without Letter of Attorney or Deed, it is uncertaine whether or no he consented thereunto, which is apparent by his sealing of the Letter of Attorney or Deed of Feoffment. Note, That a Deed sealed may be delivered without words, because there is sufficient certainty expressed in the Deed, what is meant by the Delivery, but Livery of Seisin requireth words to expresse it, and also Ceremony, to the end it may be certainly known what is intended by it; And a man absent can neither take nor make Livery without Deed.

A Plow-land uncertaine.

10. A Fine of so many Acres of Land, Meadow, and Pasture, in certaine is good, because the quantity of an Acre is certainly known by the Statute, De terris mensurandis; but a Fine De una virgata terræ shall not be received for the uncertainty; because it containes in some places more, in others lesse, and therefore Prisot saith well in 35 H. 6. 29. What a Plow may till more Land in one years in one Country, then in another. Co. ibid. 69. a. 4.

Rent and Distresse uncertaine.

11. There may be a certainty in uncertainty, as if a man hold of his Lord to keepe all the sheepe depasturing within the Lords Manor, this is certaine enough, albeit the Lord hath sometimes a greater and sometimes a lesse number there; for this uncertainty being referred to the Manor, which is certain, the Lord may distrain for this uncertainty: Howbeit no distresse can be taken for any Services, that are not put into certainty, nor can be reduced to any certainty, (for Id certum est quod certum reddi potest) because Oportet quod res certa deducatur in judicium, and upon the Avowry Damages cannot be recovered for that, which neither hath certainty, nor can be reduced to any certainty. Co. ibid. 96. a. 1. & 142. a. 3.

Protection uncertaine.

12. A Protection, as well moraturæ as profecturæ must be regularly to some place out of the Realme of England, and must be also to some place in certaine, as super salva custodia Caliciæ, &c. and not to Carlile or Wales, which are within the Realme, or the like, but it may be to Ireland or Scotland, because they are distinct Kingdomes, or to Calice, Aquitaine, or the like, but a Protection granted to one, &c. untill he returne from Scotland was in 1 E. 3. 25. disallowed for the uncertainty of the time; So likewise a Protection, Quia moratur super altum mare, will not serve, not onely because (as some think) that Mare non moratur, or for that a great part of the Sea is within the Realme of England, but likewise for the uncertainty of the place. Co. ibid. 130. b. 4.

Bishops certificate.

13. If a Bishop certifie, that another Bishop hath certified him, that the party, which is his Diocesan, is excommunicated, this certificate upon anothers report is not sufficient for the uncertainty, there is the same reason also of an Hear-say in evidence. Co. ibid. 134. a. 3.

Villain.

14. If the Lord make a Lease to his Villain for life or years by Deed or without Deed, this is an infranchisment of the Villain; but if he make him a Lease at will by Deed or without Deed, it is no infranchisement, because he hath no certainty of his estate, but the Lord may put him out when he will. Litt. S. 207. Co. ibid. 138.

Earledome Daughters.

15. If an Earle hath his dignity to him and his Heirs and dyeth, having issue one onely Daughter, the Dignity shall descend to the Daughter and to her posterity, as well as any other Inheritance, as it fell out in Sampson Leonards case, who married Margaret the onely Sister and Heire of Gregory Fines Lord Dacre of the South, and in the case of William Lord Rosse; for in such case there can be no uncertainty, when there is but one Daughter, or Sister: Howbeit, where there are more Daughters then one, the eldest shall not have the Dignity and power of the Earle, viz. to be a Countesse; but (in such case) the King, who is Co. ibid. 165. a. 3.

the

the Soveraigne of honor and dignity, may for the uncertainty confer the dignity upon which of the Daughters he pleaſe; Howbeit the Lands ſhall be divided betwixt them, as amongſt Parceners, for they are diviſible and certaine.

Co. ibid. 211. a. 2. & 220. a. 4. 16. If a man be bound to pay twenty pounds at any time during his life at a place certaine, the Obligor cannot tender the money at the place when he will, for then the Obligee ſhould be bound to perpetuall attendance, and therefore the Obligor in reſpect of the uncertainty of the time muſt give the Obligee notice, that on ſuch a day at the place limited, he will pay the money, and then the Obligee muſt attend there to receive it; for if the Obligor then and there tender the money, he ſhall thereby ſave the penalty of the Bond for ever: So likewiſe, if a man make a Feoffment in fee upon Condition, that if the Feoffor at any time during his life pay to the Feoffee twenty pounds at ſuch a place certaine, that then, &c. In this caſe alſo the Feoffor muſt give notice to the Feoffee, when he will pay it; for without ſuch notice, as aforeſaid, the tender will not be ſufficient: Alſo if A. be bound to B. with Condition that C. ſhall enfeoff D. on ſuch a day, C. muſt give notice thereof to D. and requeſt him to be on the Land at the day to receive the Feoffment, and (in ſuch caſe) he is bound to ſeek D. and to give him notice: In all which caſes it is to be obſerved, that what the contract of the parties leaves uncertain, the Law (to prevent contention) reduceth to a certainty: And therefore (in ſuch caſes) Littletons adviſe is wholeſome councell, viz. Not onely to limit a certaine place and day, but likewiſe to ſet down in the Condition a certaine time of the day, as betwixt the houres of two and four, or the like: And (indeed) it is good in Conveyances to ſet downe every thing in certainty and particularity; for certainty is the mother of quietneſſe and repoſe and uncertainty the cauſe of variance and contention: And therefore for the obtaining of the one, and avoyding of the other, the beſt meane is in all aſſurances, to take councell of learned and well experienced men, and not to truſt onely (without advice) to a Preſident: for as the Rule is concerning the ſtate of a mans body, Nullum medicamentum is idem omnibus, ſo in the ſtate and aſſurance of a mans Lands, Nullum exemplum eſt idem omnibus.

Uncertain day of payment.

Litt. S. 342. Co. ibid. 212. a. 3.

Co. ibid. 218. a. 2. 17. A Leaſe is made to a man and a woman for their lives upon Condition, that which of them two ſhall marry firſt, that one ſhall have the fee, they intermarry; In this caſe, neither of them ſhall have fee, for the uncertainty.

Leaſe on Condition to marry.

Co. ibid. 227. a. 1. 18. If the Jury give a Verdict of the whole Iſſue, and of more, &c. that is ſurpluſage, and ſhall not ſtay Judgement; for, utile per inutile non vitiatur, and neceſſary incidents required by Law, the Jury may find: Howbeit, a Verdict finding matter uncertainly or ambiguouſly is inſufficient, and no Judgement ſhall be given thereupon; as if an Executor plead plene adminiſtravit, and Iſſue is joyned thereupon, and the Jury finde, that the Defendant hath goods in his hands to be adminiſtred, but find not to what value, this is uncertaine and therefore inſufficient: ſo a Verdict, that finds part of the Iſſue, and nothing for the reſidue, is inſufficient for the whole; becauſe they have not tryed the whole Iſſue, whereby they are charged: As if an Information of Intruſion be brought againſt one for intruding into a Meſſuage, and one hundred Acres of land, upon the generall Iſſue, the Jury find againſt the Defendant for the Land, but ſay nothing for the Houſe, this is inſufficient for the whole, and ſo it was twice adjudged, viz. H. 25 Eliz. in a Writ of Error in the Exchequer Chamber inter Brace and the Queene, and M. 28, & 29 Eliz. inter Gomerſall and Gomerſall in account in Banco Regis.

Inſufficient Verdict.

Co. Inſt. parts 1. 271. b. 4. 19 A Feoffee to the uſe of A, and his Heirs before the Statute of 27 H. 8. for money bargaineth and ſelleth the Land to C. and his Heirs, who

Uncertain uſe or an uſe.

who hath no notice of the former vſe, yet no vſe paſſeth by this bargain and ſale; for there cannot be two vſes in eſſe of one and the ſame Land, and ſeeing there is no tranſmutation of Poſſeſſion by the Tertenant, the former vſe can neither be extinct nor altered: And if there could be two vſes of one and the ſame Land, then could not the Statute of Vſes execute either of them for the uncertainty.

Detinue. 20. A Writ of Detinue lyeth for goods deliuered or found, when the Plaintiff can declare in certain what they are; but it lyeth not for money out of a Bag or Cheſt, or for Corne out of a Sack, or the like; becauſe theſe cannot be diſtinguiſhed from other money or Corne: So likewiſe an Action of Detinue lyeth for Charters, which concerne the Inheritance of Land, if he know them in certaine, and what Land they concerne, or if they be in a Bag ſealed, or Cheſt locked, albeit he know not the certainty of them; but the Writings, or (at leaſt) the Bag or Cheſt he muſt know in certaine, otherwiſe that Action lyeth not; And in caſe of a Bag or Cheſt it is good to declare (if he can) of one Writing in certaine, for then the Defendant cannot wage his Law, which otherwiſe he may. Co. ibid. 288. b. 2.

Pleas double or multiplied. 21. In dilatory Pleas there may be duplicity and multiplicity of diſtinct matter, for in their time and place a man may vſe divers of them, but in Pleas perpetuall and peremptory, there ought not to be duplicity or multiplicity of diſtinct matter to one and the ſame thing, whereunto ſeverall anſwers (admitting each of them to be good) are required, for that is not allowable in Law for the uncertainty; whereof Bracton and Fleta ſpeak notably, Sicut Actor una actione debet expediri (ſaltem illa durante) ſic oportet tenentem una exceptione, dum tamen peremptoria (quod in dilatorijs non eſt tenendum) quia ſi liceret pluribus uti exceptionibus peremptorijs ſimul & ſemel, ſicut fieri poterit in dilatorijs, ſic ſequetur, quod ſi in probatione unius defecerit, ad aliam probandam poſſit habere recurſum, quod non eſt permiſſibile non magis quam aliquem ſe defendere duobus bacalis in duello, cum unus tantum ſufficiat. Vide pl. ibid. per totam paginam, for departure, double Pleas, &c. Co. ibid. 304. a. 3. Bract. fo. 5. fo. 400. *Fleta* l. 6. cap. 35.

Attornement. 22. If the Lord firſt grant the Services of his Tenant to one, and afterwards by another Deed of a later date grants the ſame ſervices to another; In this caſe, if the Tenant attorne to the laſt Grantee, it makes his Grant good, and albeit he afterwards attorne to the other Grantee, yet cannot that make the firſt Grant good; becauſe the Attornement took effect in perfecting the laſt Grant: Howbeit (in the ſame caſe) if the Tenant attorn to them both, the Attornment is void to both for the uncertainty, ſo if a Reverſion be granted for life, and after it is granted to the ſame Grantee for years, and the Tenant attorneth to both the Grants, this is alſo void for the uncertainty: A Fortiori, if the Lord by one Deed grant his Seigniory to I. Biſhop of London and to his heirs, and by another Deed to I. Biſhop of London, and to his Succeſſors, and the Tenant attorns to both Grants, this Attornment is void for both Grants; for albeit the Grantee be but one perſon, yet he having ſeverall capacities, and the Grants being ſeverall, the Attornment is not according to either of the Grants, and (by conſequent) void for the uncertainty. Co. ibid. 310. b. 2.

Uncertaine ind. 23. If Land be given by Deed to two, to have and to hold to them, & heredibus, it is void for the inſenſibility and incertainty; And although it hath a clauſe of Warranty to them and their heires, this ſhall not make the firſt words which are incertaine and inſenſible, to be of force and effect in Law, albeit his intent appeare; but his intent ought to be declared by words certaine and conſonant to Law. Co. l. 2. 85. a. 1. in *Corbets* caſe.

Uncertain a 24. In an Indenture of bargaine and ſale for twenty pounds, there are divers Covenants, and in the end there are theſe words, Ad quas conventiones perimplendas obligo me in 40 l. &c. Here, in debt brought for the 40 l. payment of the 20 l. is no Plea without an Acquittance; albeit, proofe may be made of the payment of the 20 l. yet without an Acquit- Dyer 6. 261 H. 8. 3.

tance it remaines uncertaine whether the Covenants were performed, and what other agreements there were betwixt the parties by Spilman, Fitzherbert, and Shelley, and 28 H. 8. 25. accords, Tamen Quære, for Dyer seemes to be of another opinion.

Dyer 14. 71. 28 H. 8. 25. If a Feoffment be made to four by Deed, Livery to one is good for all; It is otherwise, if it be without Deed for the uncertainty. Livery without Deed.

Dyer 17. 85. 28 H. 8. 26. A negative pregnant is disavoured in Law, for the uncertainty; as in a Writ of Entry in consimili casu, supposing the alienation to be in fee, the Tenant saith, that the Tenant for life did not alien in fee, which implies that he did alien, though not in fee; for notwithstanding that Plea, the Tenant for life might alien for another life or in tail, and therefore no good Plea for the uncertainty. A negative pregnant.

Dyer 22. b. 138. 28 H. 8. 27. If a man buy twenty quarters of Graine, and is to have them delivered at such a place upon such a day, and the contract is not performed by the Vendor; In this case, the Vendee cannot have an Action of Detinue for the Graine for the uncertainty; because one quarter of Graine cannot be known from another quarter of the same Graine; there is the like Law of Coine. No Detinue for graine or money.

Dyer 25. 156. 28 H. 8. 28. An Inquest remained pro defectu hundredorum, and the Plaintiffs Counsell made suggestion to the Court, that there were no Freeholders in the Hundred, but all Copy-holders, and Tenants in ancient Demesne, and thereupon prayed Processe, de proxim. hundred. adjacente, & non potuit habere; for the Court are not to believe the Counsels suggestion for the uncertainty thereof, but ought to have it ascertained by the returne of the Sheriff, who is a sworn Officer. Default in return.

Co. l. 1. 84. b. 4. in *Corbets* case. 29. If Land be given to A. in tail, the Remainder to B. in tail, with other Remainders over, upon Condition, that if any of these shall alien to bar the said estate, his estate shall cease as if he were naturally dead, and then it shall be to the next in Remainder: This is a void Proviso for the uncertainty; for Judges ought to know the intention of the parties by certaine and sensible words, which are agreeable and conformant to the rules of Law. A proviso not good.

Co. l. 1. 155. a. 3. in the Rector of *Chedingtons* case. 30. A man possest of certaine Land for forty yeares in consideration of a marryage to be had betwixt his Son and the Daughter of another, demiseth the Land to his Son for seventy years, to begin after his death, and after the Lessor dyes, in the case the Lease is good; because, when the Land is demised, Habendum after the death of the Lessor for seventy years, there was sufficient certainty, and no apparent uncertainty in the Deed, as it was agreed in Locrofts case, M. 34. & 35 Eliz. But if a man possest of a Lease for forty years grants to B. so many of the yeares as shall be behind, tempore mortis suæ, this is void for the uncertainty, as it is agreed in 7 E. 6. Br. Grants 154. and in Pl. Com. 520. b. So if a man have a Lease for life by Deed indented with Proviso, that if the Lessee dye within forty yeares, that the Executors of the Lessee shall have it for so many years as shall be behind at the time of his death, this is but a Covenant, and not a Lease for the uncertainty: Vide 3. & 4. P. & M. Gravenors case, Dyer 150. a. & 22. Ass. Pl. 37. Lease void for the uncertainty.

Co. l. 2. 3. *Manfers* case. 31. In debt by P. against M. the Defendant pleads the Bond was upon Condition, that P. should enjoy the Land, which he held by Feoffment from M. discharged and indemnified, and that M. and his Son should performe such Acts for further assurance, as by P. should be devised; and then he pleads further, that he had kept P. discharged and indemnified, and sealed a release devised by P. And this Plea was held insufficient, for the uncertainty. 1. because it should have shewed how the Defendant had kept the Plaintiff indemnified, being in the affirmative, but if he had pleaded in the Negative, not damnified, it had been well enough. 2. because the Defendant did not shew, that the Release concerned the Land. An uncertain Plea.

32. If

An uncertaine covenant to ſtand ſeiſed.

32. If I covenant with you, that in conſideration of Fatherly affection and for the advancement of my bloud, I will ſtand ſeiſed to the uſe of ſuch of my Sons, or ſuch of my Couſins, as you will name, upon nomination made the uſe ſhall be raiſed, for here the conſideration is particular and certaine; and the perſon by matter ex poſt facto, may be made certaine; but if I for divers conſiderations covenant with you, that I will ſtand ſeiſed to the uſe of ſuch an one as you ſhall name, here albeit you name my Son or Couſin, yet no uſe ſhall hereby be raiſed, becauſe for the generality and uncertainty this was void ab initio, and no Averment ſhall make it good or reduce it to any certainty, for the intent of the Covenantor was as generall and uncertaine as his words were: Neither can the Covenantor (in ſuch caſe) reſerve power to make Leaſes for the ſame reaſon. Co. l. 1. 176 a. 1. in *Milmayes* caſe.

Uncertaine Grant.

33. The King or a common perſon grants omnia illa meſſuagia in tenura Johannis Browne ſcituate in Wells, whereas in truth they lye in D. in this caſe, the Grant is void for the uncertainty. Co. l. 2. 33. a. 3. *Doddingtons* caſe.

Error.

34. In Error, the Record of a Recovery was of the Manor of Merleſton cum pertin. and the Writ of Error was to remove a Recovery of the Manor of Merleſton in Merleſton cum pertin. this is no good removall of the Record for the uncertainty, becauſe the true Record was not removed, Tamen quære. Co. l. 3. 2. a. The Marqueſſe of *Wincheſters* caſe.

Remainder in contingency.

35. If A. make a Feoffment to the uſe of B. untill C. ſhall returne from Rome into England, and after ſuch returne from Rome into England, to remaine over in fee, this Remainder is void for the contingency and uncertainty, it being altogether uncertaine, whether or no C. will ever returne from Rome into England, for when a Remainder is limited to take effect upon the doing of an Act, which Act ſhall be the determination of the particular eſtate; here if the Act depend upon a caſualty or a meere uncertainty whether it will ever happen or no, in ſuch caſe the Remainder depends upon an uncertainty and in contingency, and therefore ſhall not veſt preſently. Co. l. 3. 2. a. 4. in *Bonaſtons* caſe.

Caſualties not deviſable.

36. If the King grant to one and his heires, bona & Catalla felonum & fugitivorum, or utlagorum fines amerciamenta, &c. within ſuch a Town or Manor; In this caſe he cannot deviſe them to another, nor leave them to deſcend for a third part according to the Statutes of 32. & 34 H. 8. of Wills, becauſe the yearly value of ſuch Hereditaments is altogether uncertaine, and therefore they are uſually called caſualties. Co. l. 3. 32. b. 3. *Butler* and *Bakers* caſe.

Dower.

37. If Lands be conveyed to a Feme before marriage for part of her joynture, and after marriage more Land is conveyed unto her for her full joyntures, and in ſatisfaction of all her Dower, and after the Baron dyes; in this caſe, if the Son waive the Land conveyed unto her after marriage, ſhe ſhall have the Land conveyed unto her before the coverture, and her Dower alſo in the reſidue; for Land conveyed to a Feme for part of her joynture, or in ſatisfaction of part of her Dower, is no bar of any part of her Dower for the uncertainty: So if a Debtor give to the Creditor an Horſe or any other thing in ſatisfaction of part of his debt, this ſhall be a bar for no part thereof for the uncertainty. Co. l. 4. 3. a. 3. in *Vernons* caſe.

Slander.

38. In ſlander, both the perſon and ſcandalous words ought to be certaine and apparent, and not to want an innuendo to make them out, as when two are talking together of I. S. and one of them ſaith, he is a notorious theife; in this caſe, I. S in his count may ſhew, that there was ſpeech of him betwixt them, and that the one ſaid of him, He (innuendo pred. I.S. is a notorious Theif; for the Office of an Innuendo is to deſign the ſame perſon which was named incertaine before, and in effect ſtandeth in the place of a Predict. But an Innuendo cannot make that perſon certain which was uncertaine before, as if one ſay without any precedent Communication, that one of the Servants of I.S. (he having divers) Co. l. 4. 17. b. 1. *Iames* and *Rotlech* caſe.

is a notorious Felon of Felony, &c. here, for the uncertainty of the person, no Action lies, and an Innuendo cannot make it certaine; so if one say generally, I know one neer about L.S. who is a notorious Theife, and the like: And as an Innuendo cannot make the person certain which was uncertain before, so an Innuendo cannot alter the matter or sense of the words themselves, as if one speaking of L.S. saith, He is full of the Pocks, here the Plaintiff cannot say Innuendo, the French Pocks, for thereby he tries to extend the generall words, The Pocks to the French pocks by imagination of an Intent, which was not apparent by any precedent words, which the Law will not suffer for the uncertainty; for it would be inconvenient, that Actions should be maintained upon a meer imagination of an intent, which appears not by the words, upon which the Action is grounded, but is altogether uncertaine, and subject to a loose conjecture.

Co.l.4.35.a 4. in *Bevenies* case. 39. The Queen grants Totam illam portionem decimorum, &c. in *D.* nunc vel nuper in tenura Io. Corber, and Corber never had Tithes there, this Grant is void for the uncertainty in the case of a common person; A fortiori, in the Queens. Grant of tithes.

Co.l.4.40.b.3. in *Yonges* case. 40. In an Indictment there was this exception, Ictus plagam mortalem circiter pectus, and it was adjudged insufficient for the uncertainty; for it might be in the neck, in the arme, or in the belly, and an Indictment ought to expresse in certaine as well in what part the mortall wound is, as the depth and breadth of it, to the end it may appeare to the Court to be mortall; and because it was said that he upon De vulneribus & plagis prædict. and one of them was uncertainty alledged, that made the Indictment insufficient as to all. Indictment insufficient.

Co.l.4.74.a.4. in *Palmers* cases 41. An Inquisition was thus returned, that the Queene Debito jure possest of a certaine Terme, Pro termino quorundam annorum adhuc venturo, and it was adjudged insufficient, for a Terme cannot be enjoyned without shewing the commencement and certainty of the Terme, to the end that (the Debt being satisfied) the party may have the estate againe, if any part thereof shall remain, which ought to appeare; and thereupon the party may have remedy to remove the hands of the Queen or of any other person, and so it was adjudged M.32. & 33. Eliz. in Executorio. Inquisition insufficient.

Co.l.4.110.b. 4. *Adams* and *Kendalls* case. & ib.210.b. 2 in the same case, see there also 113.a. Sir *Barth. Reads* case. 42. If Land of the yearly value of 20 l. per ann. be given upon condition to finde a Priest to pray for Soules, and that the Priest shall have yearly 10 l. thereof for his Salary, and shall distribute other ten pounds to certain poor people; in this case by the Statute of 1 E.6. 14. the King shall have but the 10 l. limited to the Priest, and not the Land; but if the same Land were given to finde the Priest, and for the maintenance of 20 poor men, in this case the King shall have all the Land, albeit the Priest hath 10 l. thereof, and the poor men the other 10 l. And the reason of this diversity is, because in the first case there was a good use separate and distinct in certain from the superstitious use, but in the other case it was left altogether uncertaine how much the Priest, and how much the poor men should have, and therefore in such case the King shall have all. A charitable and a superstitious use.

Co.l.4.115.b. 3. *Turners* case in *Ad.* and *Lamb.* case. 43. A man seised of certaine Houses of the yearely value of 4 l. 6 s. 8 d. devised them upon Condition to finde an Obit, spending thereat so much as the devisees should in their discretions think fit, the Defeasance pend only upon the Obit, 6 s. 8 d. per annum, and it was adjudged that the Queen Elizabeth, should have all the houses, because the appointment was uncertain, albeit the imployment was certaine. The like.

Co.l.5.1.a. 4. in *Claitons* case. 44. Indentures of demise were ingrossed bearing Date the 26 day of May, Anno 25. Eliz. to have and to hold for three years from henceforth, and they were delivered at four a clock in the afternoon upon the 20 day of June anno præd. In this case the Lease shall end upon the 25 day Commencement of demise.

of

of June in the three yeare; for the Law in this computation rejecteth all fractions and Diviſions of a day for the uncertainty, which in deeds the Mother of contention.

Severall Intereſts, ſeverall Covenants.

45. An Authority may be granted to two, vel cuilibet eorum, as to make Livery or the like; but an Intereſt cannot be ſo granted, as if A. covenants with two, Et cum quolibet eorum, they cannot ſue ſeverally, unleſſe their intereſts were ſeverall; as if a man by Indenture deviſeth Black Acre to A. White Acre to B. and Green Acre to C. and covenants with them, Et quolibet eorum, that he is lawfull owner of the ſaid Acres; in this caſe in reſpect of their ſeverall Intereſts, by the words, quolibet eorum, the Covenant is made ſeverall; but if he demiſe the acres to them jointly, there the words, Cum quolibet eorum are voyd for the uncertainty; for albeit diverſe perſons may bind themſelves, & quolibet eorum, and ſo the Obligation ſhall be joynt or ſeverall, at the election of the Obligee, yet a man cannot bind himſelfe to three, and to each of them to make it joynt or ſeverall at the election of ſeverall perſons for one and the ſame cauſe, for the Court will be in doubt for which of them to give judgement, which the Law will not ſuffer: As it was held in 3 H.6.44. where one brought a Replevin for one beaſt againſt two, who made ſeveral Avowries, each of them by himſelf in his own right, and there (by the advice of all the Juſtices) both the Avowries abated for the inconvenience and uncertainty; becauſe, if both the Iſſues ſhould have been found for the Avowants, the Court could not have given Judgment to them ſeverally of the ſame thing. Co.l.5.19.a.al Slingsbies caſe.

Uncertain ſum.

46. It is the duty of a Declaration, to reduce the generality of the Writ into certainty, otherwiſe the iſſue will be generall and uncertain, and (by conſequent) the verdict the like, and then the Jury cannot be attainted, if they happen to give a falſe verdict. Co.l.5.34.a.in Plaiſters caſe.

Schiſmatick.

47. Where a Biſhop refuſeth to admit a Clarke, it is not a ſufficient cauſe to alledge in generall, that he is Schiſmaticus inveteratus, for that is cauſa vaga & incerta, but he ought to charge him in particular with ſome particular Schiſme, and to ſhew how and wherefore he is a Schiſmatick. Co.l.5.37.b Specots caſe.

Releaſe.

48. M. is Baile for C. in an Action where H. is Plaintiff; H. hath Judgement, and Scire facias againſt C. and in his default againſt the Baile, who pleads the Plaintiffs releaſe before Judgement, this is held an inſufficient plea, becauſe a certain duty with a Condition ſubſequent may be releaſed, as an Obligation; not an uncertain duty with a condition precedent before the time, becauſe the debt and damages are uncertaine. See alſo Co.l.10.51.a.1. in Lampets caſe. Co.l.5.70.b. Hoes caſe.

An award.

49. The Plaintiff and Defendant ſubmit themſelves to the Arbitrement of A. who awards that the Defendant ſhall enter into Bond, that the Plaintiff and his wife ſhall enjoy ſuch Land quietly; This is a voyd award, becauſe of the uncertainty of the ſumm in the Bond, which ought to be (at leaſt) to the value of the Land, alſo the award is voyd as to the Feme, becauſe ſhee is a Stranger to the ſubmiſſion. Co.l.5.77.b. Summons caſe.

A Lapſe.

50. A Patron is not bound any way to take notice of a Laps for the Incumbents not reading the Articles according to the Statute of 13 Eliz. 12. but from the Ordinary himſelfe, and no laps will incurr if that be not done, and ſuch notice ought to be certaine and particular, and therefore it is not ſufficient for the Ordinary in ſuch caſe to give notice, that the Parſonee hath not read the Articles and ſubſcribed, generally; but he ought particularly to informe the Patron, that he hath not read the Articles, &c. for which default he is deprived, and that thereupon it belongs to the Patron to preſent, for Notitia dicitur a noſcendo, and Ex vi termin. it ought to be ſpeciall and certaine, for Notitia non debet clandicare. Co.l.6.29.b. 1. in Greens caſe.

51. If

Co.l.35.b.1. The Bishop of *Bathes* case.

51. If one let the Manor of D. to I.S. for so many yeares, as I.N. hath in the Manor of S. and he hath ten years in it, such Term shall I.S have in the Manor of D. so if a Lease be made to another during the minority of I.S. and he is of the age of ten yeares, this is a good Lease for 11 years, if I.S. so long live, because such Leases have a certaine commencement and a certaine end; but if the wife of I.S. be great with childe, and a Lease be made untill the issue in ventre sa mere, shall come to full age, this is no good Lease for the uncertainty; for at the time when the Lease is to take effect, it is uncertain when the child will be borne, and (by consequent) the commencement, continuance, and end, of that Lease is uncertaine, and therefore void: So if a man let Land of the value of 20 s. per annum, untill 21 l. be levied of the Issues and profits, without Liuery, this is but a Lease at Will for the uncertainty, for it is not certain that the Land will hold to be every yeare of one and the same yearely value, vid. plus ibidem. An uncertain Lease.

52. Vide Max. 36. 1.

Co.l.6.60.a.3. *Gatewards* case.

53. Common by reason of Commonancy is against reason, for such a Common is transitory and utterly uncertaine, because it followes the person and that for no certain time or estate, but only during his inhabitancy, which kind of Interest the law will not suffer, for custom ought to extend to that which hath certainty and continuance. Common. Commonancy

Co.l.8.68.b. *Trelops* case.

54. A Bishop certifies in generall, that I.S. is excommunicate, this is not good for the uncertainty, for he ought to certifie the particular cause in certaine, wherefore he was excommunicate. Excommunication.

Co.l.8.91.a.4. *Frances* case.

55. If Land be devised to I.S. upon condition that he suffers his Executors to carry away his goods, disturbance by Parol is no breach of the Condition, but the heir that claimes interest must alledge some speciall disturbance in certaine by some act done, as by shutting the doors upon them, laying hands upon them, or the like, whereunto the other party may make a certaine answer, and whereupon a certain issue may be taken, whereof the Jury may enquire, and the Court may judge whether it be a sufficient breach of the Proviso or no. Devise.

Co.l.8.121.a.1. in Doctor *Bonhams* case.

56. Regularly, those that have power to impose Fine and Imprisonment (except a Court of Judicature) shall plead the particular cause in certain wherefore the party was so fined or imprisoned, and not in a generall or uncertaine manner, because in such Cases upon an Action brought by the party fined or imprisoned, the cause is traversable, as the Fine and Imprisonment in Doctor Bonhams case, and the Acts and Orders of Commissioners of Bankrupts; for they are traversable, and therefore ought not to be uncertainly pleaded. Uncertain plea.

Co.l.8.135.a.4. in *John Nedhams* case.

57. An Administrator cannot plead uncertainly and in generall, that the Intestate had Bona notabilia; but he ought to plead them in certain, for otherwise it will be intended that the Intestate had not Bona notabilia, in severall Dioceses. The like.

Co.l.8.155.a.3. in *Edw. Althams* case.

58. If a man by Deed gives goods to one of the sons of I.S who hath divers Sons; here, he shall not take averment which son he meant, for by judgement of Law upon this Deed, this gift is void for the uncertainty, which cannot be supplyed by averment, Vide 11 E.4.2.

Co.l.9.18.a.2. *Ann Bedingfields* case.

59. In Dower, upon plea of detainer of Charters, in bar thereof, the heir must shew the certainty of the Charters, or that they are in a chest or box, locked or sealed, to the end that a certaine Issue may be joyned thereupon, and it is not enough to plead detainer of Charters in generall, for that is an insufficient plea for the uncertainty, See also Co. l. 9. 110. a. 2. Detainer of Charters.

Co.l.9.25.a.2. in the case of *Strata Mercella.*

60. In the case of the Abbot De Strata Mercella, the Defendant pleaded, Quod pred. Abbas licite habuit bona felonum, &c. And yet therein not his case in so certain and speciall manner that the Court might adjudge Uncertain plea.

iudge whether the Abbot by the Law had Felons goods or no; And thereupon his plea was adiudged insufficient for the Uncertainty: So also it is agreed in 22 E. 4. 49. The Lord Lisles case, where one was bound in an Obligation upon Condition that he should come to B. such a day and shew the Obligee or his Councill a sufficient discharge of an Annuity of 40 s. which he claimed out of two houses, &c. And in Debt upon this Obligation, the Defendant pleaded, that he came to B. at the day aforesaid, and there offered to shew to the Plaintiff and his Councill a sufficient discharge, and that they refused to see it; upon which the Plaintiff demurred in Law; And it was adiudged that the plea was insufficient, for the plea ought to have alledged what manner of discharge in certain he offered to shew, viz. a Release, unity of possession, or other matter of discharge, whereupon the Court might have adiudged whether it had been sufficient, or no.

Ravishment of Ward an uncertain Verdict.

61. In Ravishment de Gard, (according to the Statute of Westm. 2. 35.) The Iurors found generally, that the Ward was married, and that at the time of his marriage, he was eighteen years old and upwards, &c. and this was adiudged an insufficient Verdict; because it is not only thereby left uncertain who procured him to be married, viz. Whether the Ravishor, a Stranger, or the Plaintiff himselfe, or that the Ward of his own accord married himselfe; but also it is uncertaine in the time when he was married, whether before or after the Ravishment; And therefore it is well sayd in 30 E. 3. 23. That the Verdict ought to be such that the Iudges may clearly proceed to Iudgement, and (by consequent) ambiguous and uncertaine Verdicts are insufficient and void, as in 40 E. 3. 15. In Debt against Executors, they plead fully administred, &c. the Iurors finde that they have goods in their hands, but do not say to what value, and for this uncertainty their Verdict was held insufficient and void, See more authorities, ut supra

Co. 9. 74. a. 3. in Doctor Hussey's case.

Uncertain revocation.

62. A. seised of the Manor of D. levies a Fine to uses with power of Revocation, upon payment of 40 s. to the Conusee, & being likewise seised of the Manor of S. levies another Fine thereof to the same Conusee, but to other uses, with like power of Revocation upon payment of 40 s. to the said Conusee; Afterwards A. payes 40 s. to the Conusee for revocation of all the uses raised upon both the Fines, and this payment was testified in writing under the Seales of the parties; In this case none of the uses are revoked, but the Revocation is utterly void for the uncertainty; because two severall summes of 40 s. should have been tendred, and not one summe onely, for they were severall Indentures, and severall Manors, and could not be satisfied by one summe, because it was thereby left uncertain, which uses, and of which Manor the Revocation was meant.

Co. l. 9. 106. b. 2. Lady Gresham's case in Mary. Podger's case.

Uncertaine plea.

63. In debt against an Executor, he ought not to plead, Quod ipse non habet, &c. aliqua bona, &c. præter bona, &c. quæ non sufficiunt ad satisfacienda debita predicta; but he ought to plead, Quod non habet, &c. bona, &c. præterquam bona & catalla ad valentiam of a certaine summe, Et non ultra, quæ eisdem debitis obligata, & onerabilia existunt, &c. for the first plea is insufficient for the uncertainty, because the Plaintiff cannot reply thereupon, so as a certain Issue may be taken.

Co. l. 9. 109 b. 3. Manel Tresham's case.

Uncertainty of the person.

64. When there is uncertainty in the person, to whom a Release or other Grant is made, such Release or grant cannot be good; And therefore if a Lease for life be made, the Remainder to the right heires of I. S. and the Lessee is disseised, and the eldest Son of I.S. releaseth to the disseisor, and after I.S. dyes; In this case the Release is void for the uncertainty, whether or no he shall be right heir at the death of his Father: Soulikewise in 17 Eliz a man lets to Baron and Feme for 21 years, the Remainder to the survivor of them for 21 yeares, and the Baron grants over this term, here also the grant is void for the uncertainty of the person, for albeit of

Co. l. 10. 51. a. 3. in Lampet's case.

all

all Chattels reall, which are the Femes, the Baron may diſpoſe, yet in this caſe neither the Baron nor Feme had any thing untill the Survivor, &c.

Co. l. 10. 90. a. 3. in Doctor Leyfields caſe. 65. The reaſon why colour is given in a Writ of Entre ſur diſſeiſin, Writ of Entre in the nature of an Aſſize, an Aſſize, Treſpaſſe, &c. is, for that the Law (which prefers and favours certainty as the mother of quiet and repoſe) to the intent that either the Court may adjudge upon it, if the Plaintiff demur, or that a certaine Iſſue may be taken upon a certaine point, requires that the Defendant, when he pleads ſuch a ſpeciall Plea (notwithſtanding which the Plaintiff may have right) ſhall give colour to the Plaintiff, to the end that his Plea ſhould not amount to a generall Iſſue, and ſo leave all the matter at large to the Jurors, which would be uncertaine and full of multiplicity and perplexity of matter. Colour in pleading.

Co. l. 10. 117. b. 2. in Rob. Pinfolds caſe. 66. In Treſpaſſe the Plaintiff counts for damages twenty marks, the Defendant pleads not guilty, the Jurors tax damages and coſts joyntly at twenty two markes; In this caſe the Verdict cannot ſtand, for it appeares not how much is for damages, and how much for coſts; and therefore the Plaintiff can have Judgement but for twenty marks for the uncertainty. Uncertaine Verdict.

Co. l. 11. 25. b. 2. in Hen. Harpers caſe. 67. An Ejectione firmæ brought de omnibus & omnimodis decimis in W. without ſaying garborum, fæni, lanæ, &c. this is not rightly layd for the uncertainty, becauſe there is no certainty alleadged of the nature or quality of the tithes, whereupon a certaine Judgement may be given, or execution by habere facias poſſeſſione had; And this alſo appeares in an Aſſize brought, de quadam portione decimarum, &c. in 7 E. 6. Dyer 84. Uncertaine allegation.

F. N. B. 41. a. 68. The Biſhop ſhall not cite or diſtraine any to appeare before him to make oath at the pleaſure of the Biſhop againſt the will of him, that is ſo ſummoned or cited; for ſuch generall citations, which the Biſhops make to cite men to appeare before them, proſalute animæ, without expreſſing any cauſe in ſpeciall, are againſt Law, for which the party greived may ſue a prohibition againſt the Biſhop, and thereupon an Attachment, if the prohibition be not obeyed; And ſuch cauſe ought to be onely Matrimoniall or Teſtamentary. Citations.

Plow. 56. a. 1. Swimbiſh and Talbies caſe. 69. A Bar, which is certaine to a common intent, is good; but Replications, Titles, Pleas in Abatement of Writs, and Eſtoppels ought to containe Certainty; for the Law (which is grounded upon reaſon) ordaines, that Replications which make the Iſſue, ſhould be certaine, to the end that neither the Court nor Jurors (who trie the Iſſue) ſhould be miſled or enveigled by uncertainty; and therefore albeit a man may plead in Bar Que eſtate, without ſhewing how he comes by the eſtate, yet in a Replication if he plead Que eſtate generally, it is not good, as it is held in 2 E. 4. but he ought to ſhew how he comes by the eſtate for the cauſe aforeſaid. Replications muſt be certaine.

Pl. 65. a. 3. Dive and Manningbams caſe. 70. Where a Recovery is had of two hundred Acres, upon occaſion of pleading that Recovery, to plead a Recovery of one hundred Acres, inter alia, is not good for the uncertainty, as in 22 E. 4. in a Scire facias to have execution of two hundred acres of Land, the Tenant pleads that ſince the Scire facias ſued, I. S. brought a Formedon of one hundred Acres inter alia, and recovered and had execution, Judgement of the Writ for that parcell, and this Plea was not held good, for it is not the right forme of pleading ſuch a Recovery, becauſe a Recovery ought to be certainly pleaded to every intent, and theſe words inter alia are certaine to no intent; but there it is held, that he ought to have pleaded, that I. S. brought a Formedon of two hundred Acres, whereof thoſe one hundred Acres now in demand are parcell, and hath recovered, and hath had execution. An uncertaine Plea.

71. The

Certainty in Law proceedings.

71. The proceedings of a Suit, the allegations ought to be certaine in one part or other, according to the nature of the Suit, viz. sometimes in the count, and for want of certainty it shall abate, as in 3 E. 4. A man retained in Husbandry brings an Action of debt against a Prioresse for his salary, and declares, that he was retained with his Predecessor, and shewes not the person that retained him, this count abated for the uncertainty; for it might be, that one, who had not Warranty, retained him for the Predecessor: Sometimes the Count and Writ also may be generall without certainty, as in Assizes, but there the certainty ought to be shewed by the Replication: sometimes the Writ, Count, and Replication may be uncertaine, but then the certainty ought to appeare by the Verdict, as in a Quare Impedit, the value appeares not in the Count, nor in the Replication, but it will appeare by the Verdict, for they shall assesse double damages, or damages by halfe a yeare according to the value of the Church; so in a Writ of Ward the Jury shall find whether the heire be married or not, and shall assesse damages for it, and yet in the Count or Replication no such matter appeares; So likewise in a Detinue the value of the goods shall appeare by the Verdict, &c. so as certainty ought alwayes to appeare to the Court. Pl. 84 a. 41 Partridges case.

Jeofaile.

72. In debt upon an Obligation for performance of Covenants, whereby the Defendant was bound to do and suffer to be done upon request, all such things for the Plaintiffs assurance in certaine Lands, as should be devised by councell; the Defendant saith, that he was not requested; the Plaintiff replyes, that his councell advised, that the Defendant should seal a Release, which was required to be done, and that the Defendant refused; to this the Defendant rejoynes and saith, that he did not refuse, and that he was ready to do it: And the Court said, that this rejoynder was a full Jeofaile, and therefore insufficient for the uncertainty, for that he waved his bar, viz. the request, which he ought to have maintained, as to have said, Quod non fuit requisitus. Dyer 31. 217. 28 H. 8.

Abeyance.

73. When the right of Fee-simple is perpetually by Judgment of Law in abeyance without any expectation to come in esse, there he that hath the qualified fee, and to many purposes is no more then a bare Tenant for life (concurrentibus hijs, quæ in jure requiruntur) may charge or alien it, as in case of a Parson, Vicar, &c. when the Patron and Ordinary joyne with him in the Charge or Grant: for in this case (at the common Law) when all that had an Interest in the thing did joyne, the Charge or Grant might have been thereby made certaine and infallible: but where the Fee-simple is in Abeyance, and albeit by possibility it may every houre come in esse, yet it is altogether uncertaine, when or whether ever or never that may happen: In such case, the Fee-simple cannot be charged untill it come in esse, so as it may be certainly charged or alienated: As if a Lease for life be made, the Remainder to the right Heires of I. S. Here the Fee-simple cannot be charged or alienated, before I. S. be dead, in case I. S. dye, living the Tenant for life, but if the Tenant for life happen to dye before I. S. then is the Remainder vanished and gone, because it cannot immediatly vest after the death of the Tenant for life. Co. Inst. part 1. 343. a. 3. Co. ibid 378. a. 3.

Second deliverance.

74. Upon a second deliverance the Defendant being a Widow justifies by an estate for life, if she so long continue a Widow, and averreth not, that she is the same woman, to whom the estate was made, nor that she is still a Widow, for which uncertainty, and others concerning the place, where the Cattell were taken, the Plaintiff had Judgement &c. Dyer 142 51, &c. 3, 4 P. M.

Inquisition.

75. Inquisitio capta apud D. of Land in S. without shewing in what County either D. or S. is, was adjudged insufficient for the uncertainty, because upon a Traverse it could not be tryed for want of the knowledge, where the Venue should be taken. Dyer 208 19. 3, 4. Eliz.

Dyer 254. b. 1. 9 El. 76. In debt for rent arreare, the Plaintiff counts, that his termor demised to the Defendant the terme and deed, and that the Defendant entred and was possessed, and that for arreare of rent the Action accrued, to this the Defendant demurs, 1. because he hath not alleaged, that the Devisor made Executors, and that the Defendant entred with their agreement: 2. For that he saith not, vertute cujus legationis, the Defendant was possest: for which uncertainties the Count was adjudged insufficient: for if the Defendant were in of any other estate or title then as Assignee of the Lessee, an Action of debt lyeth not against him for want of privity. Debt for rent arreare.

Dyer 264. 39 9. Eliz. 77. A new Assignment was in one Acre, terræ sive prati in campo vocat. N. the Defendant pleads not guilty, but for the uncertainty, whether Land or Meadow, and also because there was no abuttalls, the Jury were discharged. New Assignment.

Hob. 2. *Axworths* case. 78. In an Action upon the case by Thomas against Axworth, the words were, This is John Thomas his writing, innuendo the Plaintiff, and he innuendo, &c. hath forged this Warrant, the Sheriffs Warrant at the Suit of M. Hog against the Defendant, Innuendo: And in this case it was held, that the Innuendo would not support the Action, the word Warrant alone being of an uncertaine sense, and the matter of the Action shall not be enlarged or ascertained by the Innuendo; as Pox, innuendo, the French Pox. Vide Hob. 6. Miles case, & 45. Harvies case. Slander.

Hob. 38. *Dawties* case. 79. An office was found by Commissioners after the death of William Dawtry, whereupon a Melius Inquirendum went forth and recited, but thus, Cum per quandam Inquisitionem captam apud Chichester, &c. and doth not say, that it was either by Commission or Writ, or before whom: and it was held void for the uncertainty, and the office also, that was taken upon the Melius, for by the Melius it ought to appeare, that the first office was by warrant, &c. Office.

Hob. 89. *Rich* and *Shore*. 80. In an Ejectione firmæ the Plaintiff counts of a Messuage, &c. with Appurtenances called Dizard in Cornewall, to hold for five years, the Defendant pleads not guilty, whereupon the Plaintiff had Judgement; And the Defendant assignes for Error, that the Plaintiff hath not shewed in what Towne, Parish, Hamlet, or place the Messuage lay, but in the generall County, and thereupon the Judgement was reversed in the Exchequer Chamber, 13. Jac. for here was a tryall without a Visne. Ejectione firmæ

Hob. 90. 81. Vide Hob. 90. Keere and Owen upon an Elegit, Error for omitting the Entry of a clause in the Roll, which were expressed in the Writ and Returne. Elegit.

Hob. 128. *Pie* and *Coke*. 82. Two Informations exhibited the same day against the same party for one and the same offence, Judgement shall be given for neither, for the uncertainty. Vide Hob. ibid. for an Inrolment of a Deed, & 129. Wilton, for an Amerciament in a Leet. Informacion.

163. *Impersonalitas non concludit nec ligat.*

Co. Inst. 1. 352. b. 1. Pl. Co. 398. a. 1. 1. An Estoppell shall not be spoken impersonally, as to say, ut dicitur, or the like; but it ought to be a precise affirmation of that which maketh the Estoppell; neither yet doth a recitall conclude any thing, because it is no direct affirmation. The Earle of Leycesters case in Plowd. An Estoppell.

164. *Generale nihil certi implicat.*

Generall words.

1. If the King by his common perſon grant *Omnia illa meſſuagia in tenuris I. B. ſcituate in W.* whereas in truth they lye in D. In this caſe, becauſe the grant is generall, and is reſtrained to a certaine Towne, the Patentee or Grantee ſhall not have any Lands out of that Towne, unto which the generality of the Grant refers. Co. Inſt. 1. 33. a. 3. *Hadingtons* caſe.

Slanders

2. If one ſaith to another, that he is perjured, or that he hath forſworn himſelfe in ſuch a Court, ſuch words of ſlander are actionable, for by theſe words it appeares, that he hath forſworne himſelfe in a judiciall proceeding; but if one ſay to another, that he hath a Plaintiff, and hath gotten it by ſwearing and forſwearing, theſe words will beare no Action; becauſe they are too generall, and words which ſhall charge any with an Action, in which damages ſhall be recovered, ought to have convenient certainty: So if one call another Villain, Knave, Wretch, or the like, or tels him that he is forſworn, ſuch words are not actionable, becauſe they are accounted words of heate and paſſion, and benignior ſententia in verbis generalibus ſeu dubijs eſt præferenda; for Actions of ſlander ſhall not be maintained by any ſtrained conſtruction or argument, becauſe they are now frequent now-a-dayes, then in times paſt. Co. l. 4. 15. a. 4. *Stanhop and nihil* caſe.

Schiſme.

3. It is not a ſufficient allegation for the Biſhop (who refuſeth to preſent to a benefice) to ſay that the Preſentee is a Schiſmatick in generall, but he ought to accuſe him of ſome Schiſme or hereſie in certaine, to the end the Court may conſult with Divines to know whether it be Schiſme or no, and thereupon make Judgement whether the originall cauſe of refuſall be juſt or no. Co. l. 5. 58. b. 4. *Speeds* caſe.

Arreſts

4. When the Sheriff, Bayliffs, or Serjeants arreſt one, it is not ſufficient for them to ſay in generall words I arreſt you, but they ought upon the arreſt to ſhew at whoſe Suit, out of what Court, for what cauſe they do it, and when the Writ is returnable; to the end that if it be upon an Execution, he may pay it and free his perſon from Impriſonment, and if upon a meane Proceſſe, either to agree with the party, or to put in bail according to Law. Co. l. 8. 54. a. 4. The Counteſs of *Rutlands* caſe.

Errors.

5. In Aſſignment of Errors a generall Aſſignment is not good, as to ſay, in omnibus erratum eſt, for that expreſſeth no certainty; but the Aſſignment ought to be ſpeciall and certaine, as to ſay, in hoc erratum eſt, &c. and to ſhew the certainty of the things, and againe to ſay, & in hoc erratum eſt, and to ſhew another thing, & ſic de ſingulis, in which he will aſſigne Errors. F. N. B. 20. H.

Arbitrement.

6. The ſubmiſſion to an award betwixt A. and B. was generall, viz. of all Actions, Demands, &c. And the Award was that A. ſhould pay B. twenty pounds: And in this caſe it was objected, that it did not appeare that the matter of the Arbitrement was the matter onely that was betwixt them, becauſe the ſubmiſſion was generall of all Actions, Demands, &c. And therefore if the Arbitrement were not made of all the matters in controverſie, the award was void: Howbeit, the award was adjudged good, becauſe when the ſubmiſſion is generall of all Actions, Demands, &c. Generale nihil certi Implicat, and therefore it ſtands well with the generalty of the words, that there was but one cauſe depending in controverſie betwixt them. Co. l. 8. 98. a. 2. *Baſſets* caſe.

165. *Doloſus verſatur in generalibus.*

Co. l. 3. 80. b. 4. *Twines* caſe. 1. P. being indebted to T. in foure hundred pounds, and to C. in two hundred pounds, C. brings an Action of debt, P. poſſeſſed of goods to the value of three hundred pounds makes a gift to T. in part of payment, by the name of all his Goods and Chattells, but continues the Poſſeſſion and imployes them to his own uſe, to prevent the execution of a Fieri facias at the Suit of C. Here one of the badges of Fraud alleadged in that Grant, was, for that it was generall, viz. of all his Goods, &c. A fraudulent Deed.

Co. l. 5. 57. b. 4. *Specots* caſe. 2. It is not a ſufficient allegation for a Biſhop upon refuſall of a Clerk to ſay in generall, that he is a Schiſmatique, Heritique, or the like; but he ought to accuſe him of ſome crime, or Error in particular; becauſe if ſuch generall allegation ſhall be admitted, Biſhops (at this day) might at their pleaſure deprive all Patrons of their Preſentations. Vide 164. 3. for Doloſus verſatur, &c. Schiſmatique

166. Variance.

Co. Inſt. 1. 131. a. 4. 1. A materiall Variante between a Protection, and the Record doth avoid it. Protection.

Co. ibid. 53. a. 3. 183. a. 1. 2. If the Tenant do or ſuffer waſte to be done in Houſes, yet if he repaire them before any Action brought, there lyeth no Action of Waſte againſt him: Howbeit he cannot in ſuch caſe plead Non waſt fait, for by reaſon of the Variance between the Evidence and ſuch a Plea, the Iſſue will be found againſt him; but he muſt plead the ſpeciall matter according to the truth of his caſe. Waſte.

Co. ibid. 282. b. 4. 3. In Battery Not guilty is a good Iſſue, where the Defendant committed no Battery at all; but regularly (at the common Law) if the Defendant hath cauſe of Juſtification or excuſe, then can he not plead not guilty; for then upon the Evidence it ſhall be found againſt him; becauſe by ſuch a Plea he confeſſeth the Battery, and upon the Iſſue cannot juſtifie it; but he muſt plead the ſpeciall matter, and confeſſe and juſtifie the Battery; for otherwiſe the Variance of the Evidence from his Plea will cauſe the Jury to find him guilty. The like Law is in many other caſes; and therefore it is a learning neceſſary to be known, becauſe the loſſe of many cauſes dependeth thereupon: As in Battery if the Defendant can juſtifie the ſame to be done of the Plaintiffs own aſſault, he muſt plead it ſpecially, and muſt not plead the generall Iſſue. Battery.

Co. ibid. 4. In Treſpaſſe of breaking his Cloſe, upon not guilty he cannot give in Evidence, that the Beaſts came thorough the Plaintiffs Fence, which he ought to keep, nor upon the generall Iſſue juſtifie by reaſon of a Rent-charge, Common, or the like. Treſpaſſe.

Co. ibid. 283. a. 1. 5. In Detinue the Defendant pleadeth non detinet, in this caſe he cannot give in Evidence that the goods were pawned to him for money, and that it is not paid, but he ought to plead it: Howbeit he may give in Evidence a gift from the Plaintiff; for that proveth he detaineth not the Plaintiffs goods. Detinue.

Co. ibid. 6. In Waſte upon the Plea non fecit vaſtum, he may give in Evidence any thing, that proveth it no Waſte, as by tempeſt, lightning, enemies, or the like: but he cannot give in Evidence juſtifiable Waſte, as to repaire the Houſe, or the like; for that will cauſe a Variance between the Evidence and the Iſſue. Waſte.

Co. ibid. & l. 5. 119. *Whelpdales* caſe. 7. If two men be bound in a Bond joyntly, and the one is ſued alone, he may plead this matter in Abatement of the Writ, but he cannot plead non eſt factum, for it is his Deed, though it be not his ſole Deed, See Whelpdales Joynt Obligees.

Whelpdales caſe, where a man may ſafely plead non eſt factum, & where not, and former books that treat of that matter, well reconciled: See alſo more of this matter Co. Inſt. ubi ſupra, &c. And here note, that in matter of pleading (to prevent variance) each party muſt be very circumſpect in the ordering thereof, leaſt his Replication depart from his Count, or his Rejoynder from his Bar, Et ſic de cetæris. Likewiſe what is departure in pleading and what not, See Co. Inſt. 1. 304. per totam paginam, & pl. Co. 105. b. Co. Inſt. 1. 303. b. 4.

Variance inter Writ and Count.

8. In an Action upon the caſe Variance was found betwixt the Writ and the Count in the Defendants name, for in the Count he was named George, and in the Writ Chriſtopher, and after Judgement for the Plaintiff in the Common Place upon a Writ of Error in the K. B. the Judgement was reverſed by reaſon of that variance; for the Statute of 18 Eliz. 14. gives remedy where there is no Originall Writ, but not where there is a Writ and a materiall variance betwixt the Writ and Count, &c. Co. l. 5. 37. a. 4. *Biſhops* caſe. Co. l. 8. 163. a *Blackamores* caſe.

Variance inter Originall and Judgement.

9. There ought not to be any variance betwixt the Originall Writ, and the Judgement given thereupon, but the Judgement ought to be conformable to the Originall, becauſe it is grounded thereupon: And therefore in Rabiſhment of Ward, if the Action be grounded upon the Statute of Weſtm. 2. 35. according to the forme of the Writ there preſcribed, the Plaintiff cannot have Judgement at the Common Law, but the Judgement ought to be conformable and purſuant to the Originall Writ, which is the Foundation and ground of the Judgement, Vide plus ubi ſupra. Co. l. 9. 74. a. 1. Doctor *Hiſ-leyes* caſe.

Variance of names.

10. The Dean and Cannons of Windſor, were incorporate by the Statute of 22 E. 4. by this name, The Dean and Cannons of the Kings free Chappell, &c. And in the Raigne of P. and M. they made a Leaſe of certain Lands by this name, The Dean and Cannons of the King and Queens free Chappell, &c. And in an Ejectione firmæ, brought by Wingate againſt Hall, M. 29. and 30. Eliz. the Leaſe for that variance was adjudged void. Co. l. 10. 124. b. 2. *Linne Regis* caſe. *Wingates* caſe, 29. & 30. Eliz. Hob. 124.

The like.

11. Merton Colledge in Oxford, was incorporate by Act of Parliament anno 1. M. Per nomen Guardiani & Scholarium Domus ſive Collegii Scholarium de Merton, &c. And they made a Leaſe, per nomen domus ſive Collegii de Merton, omitting Scholarium; And in an Ejectione firmæ, H. 30. Eliz. This omiſſion was agreed to be a Variance in ſubſtance to quaſh the Leaſe; for the ſayd Act hath Baptized the Colledge by the name of the Colledge of the Schollars of Merton, and they made the leaſe by the name of the Colledge of Merton himſelfe, who, (in truth) was the Founder. Co. ibid. 125. a. 2. *Merton* Colledge caſe in B. R.

ſtat. quer.

12. In an Audita querela, Variance betwixt the Writ and the Record ſhall cauſe the Writ to abate. F. N. B. 104. r.

Variance inter Brief and Deed.

13. In Debt upon the Statute of 32 H. 8. 9. made againſt buying pretenced Titles, &c. That Statute was recited in the Count to commence the 28 of Aprill anno 32 H. 8. whereas it did begin the 28 of Aprill anno 31 H. 8. and was continued by prorogations untill 32 H. 8. and for that variance the Count was adjudged defective. Pl. Co. 79 b. 4. *Partridges* caſe.

The like.

14. In 20 H. 6. A man brings a Writ of Forger of falſe Weights; and the Writ was Diverſa facta & minimenta, &c. and he counts but of Deed only, and Per totam curiam, for that variance the Writ ſhall abate. Pl. ibid. 84. b. 4.

Writ and Count.

15. In a Writ De conſuetudinibus & ſervitiis, if the Demandant ſay, De reddibus & arreragiis, &c. Theſe words prove that the Demandant himſelfe was ſeiſed of the Services, and then if he count in ſuch a Writ of the Seiſin of his Anceſtor, and not of his own Seiſin, for that variance the Writ ſhall abate; F. N. B. 151. I.

16. The

Dyer 150. 85. 3,4. P.M. A void leaſe.

16. The Corporation of Eaton Colledge was created by H. 6. per nomen præpoſiti & Collegii Regalis Collegij beatæ Mariæ de Eaton, &c. Since in the time of E.6. a Leaſe was made by Sir Thomas Smith, and the ſucceſſors, Per nomen Præpoſiti & ſocioram Collegii Regalis de Eaton, was adjudged void for the variance.

Dyer 191. 22. 2,3 Eliz. Cuſtome.

17. The reſts of a Copyholder pleaded a Cuſtome, to have the Copyhold during her life after her husbands death, and upon the evidence the cuſtome appeared to be only Durante viduitate, and thereupon the Defendant demurring to the Evidence, Iudgement was given againſt her.

Dyer 219. 11. 5. Eliz. Debt.

18. A man declares for the debt of 20 l. upon the ſale of Wood, and gives in evidence but for twenty Markes, it ſhall be found for the Defendant, as if there hav been variance in the things ſold, Tamen Quære if there be no difference, for the Iſſue is Quod nullam Denariam inde debet, So in Detinue of a chain of three ounces, where it weighes but two ounces, the Law lay 22 E. 4.

Dyer 299. 54. 13. Eliz. Title.

19. Iſſue was joyned, that T. Welt, Miles dominus de la Warre non demiſit, and in truth he was then Dominus, but at the time of the demiſe he was but Knight, yet it ſeemed to three Juſtices that the dignity was parcell of the Iſſue, ſo it could not be found with him, that pleaded his Leaſe.

Dyer 338. 14. 18. Eliz. Appeal.

20. In an appeal of the death of a Brother againſt I. S. of M. Gen. as principall, and one F. as acceſſory, wherein the name of the principall was T.S. The acceſſory appears and pleads, Nul tiel in rerum natura, as I.S. the day of the Writ purchaſed, nor at any time ſince; In this caſe the two Chief Juſtices held, That albeit there were another I.S. in another County, if it were not in the ſame County, where the Teſte of the is, or if he were dead before the Writ purchaſed, the Plea fulliſieth, and there alſo it was held, that in Favorem vitæ, a man might traverſe the Sheriffs Return.

Hob. 38. Writ.

21. In Waſt, if more Townes be mentioned in the Declaration then is the Writ, where the Waſt is ſuppoſed to be done, the Writ ſhall abate. The Earl of Cumberlands caſe.

Hob. 118. the Bishop of York's caſe. Amendment.

22. In a Quare Impedit for the Vicaridge of Leeds, the word Vicariam was inſerted inſtead of Vicariam, and exception being taken thereunto, it was amended by the Curſitor in open Court.

Vide 40. 53. 167. Contrariety and Repugnancy. And therefore, Liber liberi feoffamenti.

Co. Inſt. 1. 97. a. 1. If Lands were given to hold In libera Eleemoſina, reddendo, a Rent, the Reſervation of the Rent ſeemeth to be void, becauſe it is repugnant and contrary to the former grant, In libera Eleemoſina.

Co. Ibid. 142. a. 3. Proviſo cannot be reſerved.

2. A man upon his Feoffment or Conveyance cannot reſerve to himſelfe parcell of the annuall profits themſelves, as to reſerve the Meſſuage or Herbage of the Land, or the like, for that would be repugnant to the Grant, Non debet enim eſſe reſervatio, de profectis ipſis, quæ ea concedantur, ſed de redditu novo extra proficia.

Lit. S. 220. Co. ib. 146. a. 2. Proviſo void.

3. When in a generall grant the Law doth give two remedies, the Grantor may provide that the Grantee ſhall not uſe one of them, and may leave him to take the other, as upon the Grant of an annuity, the Grantor may provide, that the Grantee ſhall not charge his perſon; but where the Grantee hath but one Remedy, there that Remedy cannot be barred by any Proviſo, for ſuch a Proviſo would be repugnant to the Grant.

Co. ib. 231 The like.

4. If a man by his Deed granteth a Rent charge out of the Manor of D. (wherein the Grantor hath nothing) with a Proviſo that it ſhall not

not charge his perſon; Here, albeit the Repugnancy doth not appear in the Deed, yet the Proviſo taketh away the whole effect of the Grant, and therefore is (in Judgement of Law) repugnant; for upon the matter it is but a Grant of an Annuity, provided that it ſhall not charge his perſon.

The like. 5. If a man by his Deed grant a Rent-charge out of Land, provided that it ſhall not charge the Land; Here, albeit the Grantee hath a double Remedy, as above is ſayd exam. 3. yet the Proviſo is repugnant, becauſe the Land is expreſſely charged with the Rent, but the Wrzit of nuliy is but implyed in the Grant, and therefore that may be reſtrained without any repugnancy, and ſufficient Remedy beſides left for the Grantee. Co.ib.a.4.

Conditions repugnant. 6. If a man give Lands to another, and to the Heires males of his body, upon Condition that if he dye without heire female of his body, that then the Donor ſhall re-enter, this Condition is utterly void; for he cannot have an heir Female, ſo long as he hath an heir male. Co.ib.164.a.

The like. 7. If a man make a Feoffment in Fee upon Condition that he ſhall not alien, this Condition is repugnant and againſt Law, and the Eſtate of the Feoffee is abſolute: But if the Feoffee be bound in a Bond, that the Feoffee and his Heirs ſhall not alien, this is good; for he may notwithſtanding alien, if he will forfeit his bond that he himſelf hath made: So it is alſo if a man make a Feoffment in Fee upon Condition that the Feoffee ſhall not take the profits of the Land, this Condition is repugnant, and againſt Law, and the Eſtate conveyed is abſolute: But, a Bond with a condition that the Feoffee ſhall not take the profits of the Land, is good. If a man be bound with Condition to enfeoff his wife, the Condition is void and againſt Law; becauſe it is againſt a Maxime of Law, yet ſuch a Bond is good: ſo if he be bound to pay his wife money, that is good alſo, Et ſic de ſimilibus, whereof there be plentifull Authorityes in our Bookes. Co.ib.206.b. 3.122.b.4. Litt.S.360.

Deviſe, Releaſe, &c. 8. If a man deviſe Land upon Condition, that the Deviſee ſhall not alien, the Condition is void; And ſo it is of a Grant, Releaſe, Confirmation, or any other Conveyance, whereby a Fee-ſimple doth paſſe, for it is abſurd and repugnant to reaſon, that he, who hath no poſſibility to have the Land revert to him, ſhould reſtraine the Feoffee, Deviſee, or Grantee, in Fee-ſimple, of all his power to alien. Co.ibid.223. a.1.

Chattells. 9. If a man be poſſeſt of a Leaſe for yeares, or of an Houſe, or of any other Chattell, reall or perſonall, and give or ſell his whole Intereſt or Property therein, upon Condition that the Donee or Vendee ſhall not alien the ſame, this is a void Condition; becauſe his whole Intereſt and Property is out of him, ſo as he hath no poſſibility of a Reverter, and it is alſo againſt Trade and Traffick, and bargaining and contracting betwixt man and man. Iniquum eſt ingenius hominibus non eſſe liberam rerum ſuarum alienationem: Again, Rerum ſuarum quilibet eſt moderator & arbiter: Take alſo this Rule, Regulariter non valet pactum de re mea non alienanda. Co.ibidem.

Seigniory in Rent, &c. 10. If a man be ſeiſed of a Seigniory, Rent, Advowſon, Common, or any other Inheritance that lyeth in Grant, and by his Deed granteth the ſame to a man and to his Heires, upon Condition that he ſhall not alien, this Condition is alſo void for the repugnancy: Howbeit ſome have ſayd, that a man may grant a Rent charge newly created out of Lands to a man and his Heires upon ſuch a Condition, and that in ſuch caſe it ſhall be good, becauſe the Rent is of his own Creation, but this is againſt the reaſon and opinion of Littleton (Sect. 360.) and alſo againſt the height and purity of a Fee ſimple: Howbeit, the examples aforeſaid are to be underſtood of Conditions annexed to the Grant or Sale it ſelf, in reſpect of the Repugnancy, and not to any collaterall thing; As if A. be ſeiſed Co.ib.a.3.

Condition nor repugnant.

of

of Black acre in fee; and B. enfeoffeth him of white Acre, upon Condition that A. ſhall not alien black acre, the Condition is good, becauſe the Condition is annexed to other Land, and oufteth not the Feoffee of his power to alien the Land, whereof the Feoffment is made, and ſo no Repugnancy to the Eſtate paſſed by the Feoffment; And ſo it is of gifts or Sales, of Chattells reall or perſonall: Again, A man before the Statute of Quia Emptores terrarum, might have made a Feoffment in Fee, and added further, that if hee or his Heires did alien without Licence, that then he ſhould pay a Fine, this had been good: And it is ſaid, that then the Lord might have reſtrained the Alienation of his Tenant by Condition, becauſe the Lord had a poſſibility of Reverter, & ſo it is in the Kings caſe at this day, becauſe he may reſerve a Tenure to himſelf.

Co.ib.223.b 4. Co.l.10.38. b. 4. *Mary Portingtons* caſe. Co.l.5.40. Sir *Anthony Mildmayes* caſe.

11. If a gift in Taile be made upon Condition, that the Donee, &c. ſhall not alien, this Condition is good to ſome intents, and void to other ſome; for as to all thoſe alienations, which amount to any diſcontinuance of the Eſtate Taile, (as Littleton ſpeaketh, Sect. 362.) or are againſt the Statute of Weſtminſter 2. the Condition is good without queſtion; but as to a common Recovery, the Condition is void, becauſe this is no diſcontinuance but a Bar, and this common Recovery is not reſtrained by the ſaid Statute of Weſtminſter 2. and therefore ſuch a Condition is repugnant to the Eſtate Taile; for it is to be obſerved, That to this Eſtate Taile there be diverſe incidents, First, To be diſpuniſhable of Waſt. Secondly, The Wife of the Donee in Taile ſhall be endowed. Thirdly, That the Husband of the Feme Donee after Iſſue ſhall be Tenant by the Curteſie. Fourthly, That Tenant in Taile may ſuffer a common Recovery: And therefore if a man make a gift in Taile upon condition to reſtraine him of any of theſe incidents, the condition is repugnant and void in Law: And it is further to be obſerved, That a collaterall Warranty or lineall without aſſets in reſpect of the recompence is not reſtrained by the Statute De donis, no more is a common Recovery in reſpect of the intended recompence: And Littleton ubi ſupra, to the intent to exclude the Common Recovery, ſaith, Tiel alienation & diſcontinuance, joyning them together. Condition repugnant upon grant of an eſtate in taile.

Inſt.pars 1.Co. 224.a. 2.

12. If a man before the Statute De donis, had made a gift to a man, and to the Heires of his Body, upon Condition, that after Iſſue he ſhould not have power to ſell, this Condition had beene repugnant and void; Pari ratione, after the Statute a man makes a gift in Taile, the Law, Tacite, gives him power to ſuffer a common Recovery, therefore to add a Condition, that he ſhall have no power to ſuffer a common Recovery, is repugnant and void. The like.

Co.ibidem.

13. If a man make a Feoffment to Baron and Feme in Fee, upon Condition that they ſhall not alien, to ſome intent this is good, and to ſome other intent it is void, for to reſtraine an alienation by Feoffment, or alienation by Deed, it is good; becauſe ſuch an alienation is tortious and voidable: But to reſtraine their alienation by Fine is repugnant and void, becauſe it is lawfull and unavoidable. Feoffment to Baron and Feme.

Co.ibid.

14. It is ſayd, that if a man enfeoff an Infant in Fee, upon condition, that he ſhall not alien, this is good to reſtraine alienations during his minority, but not after his full age. Infant.

Co.ibid.

15. It is likewiſe ſayd, that a man by Licence may give Land to a Biſhop, and his Succeſſors, or to an Abbot and his Succeſſors, and add a Condition to it, that they ſhall not without the conſent of their Chapter or Covent alien, becauſe it was intended a Mortmain, that is, that it ſhould for ever continue in that Sea or Houſe, for that they had it En autor droit, for religious and good uſes: And note, That whatſoever is prohibited by the intent of any Act of Parliament, may be prohibited by Condition, and ſhall cauſe no repugnancy. *Spirit. corp.*

16. A

Confirmation. 16. A Diſſeiſor makes a Leaſe for one hundred years, and the Diſſeiſee confirmes the eſtate of the Leſſee for fifty of theſe years, this is a confirmation of the whole terme, for when he had once confirmed the Leſſees eſtate, the whole eſtate was thereby confirmed, and therefore afterwards to limit the terme to fifty years onely, when the whole terme was confirmed before, is repugnant and void; but the Confirmation ought to have been of the Land for part of the terme; ſo likewiſe might the Diſſeiſee confirme part of the Land for part of the terme, &c. Vide infra 32. Co. ibid. 297. a. 2.

Habendum. 17. In a Deed or other Conveyance of Land, when the Habendum doth either agree in ſubſtance with the Premiſſes, or enlarge them, the Habendum is good, but when it abridgeth the Premiſſes, it is repugnant and void. Vide Dyer 272. 30. Co. ibid. 295. a. 2.

Repugnant covenant. 18. John de Marre made a Charter to John de Burford of Fee-ſimple and the ſame day it was covenanted between them, that John de Burford ſhould hold the ſame Tenements for eight years, and if Jo. de Marre did not pay to Jo. de Burford one hundred markes at the end of the terme, that then the Land ſhould remaine to Jo. de Burford and his heires: In this caſe, the ſubſequent Covenant was repugnant and void; for firſt, the Charter of the Fee-ſimple was abſolute, and the Covenant being made after the Charter, could neither alter the abſolute Charter, nor upon a Condition precedent give him a Fee-ſimple, that had a Fee-ſimple before. Co. ibid. 217. b. 3. 11 E. 2. Voucher 265.

A ſaving Repugnant. 19. I.S. being ſeiſed of certaine Land in Fee, the ſame Land is given by Act of Parliament to the King in Fee, ſaving the Eſtates, Rights, &c. of all perſons, In this caſe, the Eſtate of I.S (the owner of the Land) is not ſaved; for that would be repugnant, and make the expreſſe gift void, and vaine. Co. l. 1. 47. a. in *Alton woods* caſe.

Act of Parliament repugnant. 20. It appears in our Books, that a ſaving in an Act of Parliament, which is repugnant to the body of the Act is void, as in Plowdens Commentaries fol. 563. b. where the ſuppoſed Attainder of the Duke of Norfolke was by Act of Parliament in primo Mariæ declared to be void and null, ab initio, ſaving the Eſtates and Leaſes made by E. 6. This ſaving was void, for when the Attainder was declared to be void, the ſaid ſaving was againſt the body of the Act, and therefore repugnant and void. Co. l. 1. 47. in *Alton Woods* caſe.

The like. 21. It is enacted by the Statute of 31 H. 8. cap. 13. that all Houſes of Religion, and their Poſſeſſions then or afterwards to be diſſolved ſhall be the Kings in the ſame eſtate and condition, as they were at the time of the making of the ſaid Act, ſaving to all ſtrangers their Intereſts, &c. After the ſaid Act the Abbot of Ramſey grants the next avoydance of a Church of his Patronage, and after the Abbey is diſſolved, and it was adjudged (Mich. 6. & 7. Eliz. Dyer 231.) that the Grant was void, and the ſaving repugnant to the body of the Act, for if the Advowſon were in the King in the ſame eſtate and condition, as it was at the time of the making of the Act, then a Grant made after cannot be ſaved. Co. ibid. a. 3.

The like. 22. If Land eſcheat to the King by Forfeiture of Treaſon, and after this Land is given to another by Act of Parliament, ſaving to all others their Rents, Services, &c. This ſaving is repugnant and void, for they were extinct by the Forfeiture, 14 Eliz. Dyer 313. Co. ibid. Co. l. 8. 118. b. 3. Doctor *Bonhams* caſe.

The like. 23. By the Statute of 1 E. 6. of Chanteries, all Services, Rents, &c. are ſaved, yet this ſaving as to Services is repugnant and void, for the King cannot hold of any, as it is held 14 Eliz. Dyer 313. a. Co. Inſt. ibid. a. 4.

The like. 24. In the caſe of Alton Woods, the Manno of Abbotteſley being expreſſely given to the King, by the Statute of 28 H. 8. the generall ſaving cannot extend to ſave the eſtate, &c. of him, that was ſeiſed of the Land, for that would be repugnant to the body of the Act, and would make the Act vaine and idle. Co ibid. & 52. b. 1.

Co. l. 1, 84. a. 3. Corbets case. Co. l. 6. 40 b. Sir Anthony Mildmayes case.

25. C. covenants to stand seised to his own use for life, the Remainder to R. in tail, the Remainder to A. in tail, &c. upon this Condition & Proviso, that if any of these shal resolve to bar the said estate, that then his estate shall cease, as if he were naturally dead, and he to the next Remainder; Here, this Proviso is repugnant and against Law, for an estate taile cannot cease by the onely death of the Tenant in tail, but by his death without Issue, and death naturall or civill is requisite to every Descent, Reversion, or Remainder upon the determination of an estate taile. Vide pl. ibid. Repugnant.

Co. ibid. b. 3.

26. In 8 Assiz. Pl. 33. A man gives Land to Mary and Johan his Sisters, Et hæredibus de corporibus earum legitime procreatis (whereby they had a joynt estate for life, and severall Inheritances) and the Donor (intending that neither of them should breake the Joynture, but that the Survivor should have all, per jus accrescendi) added this clause, Sub hac forma quod illa quæ illarum diutius vixerit tenebit terram illam integram; Howbeit, in as much as his intent is contrary to Law, if the Joynture were severed by Fine levyed, the Surviving shall not have the part so severed by the said clause, which he hath so inserted of his owne conceit and imagination repugnant to Law and reason. Joynt-estate repugnant.

Co. ibid. b. 4.

27. In Plesintons case in 6 R. 2. (which see tit. Quid juris clamat, 20.) A man makes a Lease upon Condition, that if the Lessor grants the Reversion, that then the Lessee shall have fee; In this case, if the Lessor grant the Reversion by Fine, the Lessee shall not have fee, for the Condition is repugnant and void. Vide Pl. Com. 52. a. 4. Colthirst and Bevish. Condition repugnant.

Co. l. 1. 176. b. 1. Mildmayes case.

28. When an use is raised in consideration of Fatherly love, &c. with a Proviso to make Leases, the Proviso is repugnant and void, because when the Indenture is once sealed and delivered, his power of making Leases is taken away: it is otherwise where uses are raised upon a Fine, Recovery, or Feoffment, for there needs no consideration. Proviso repugnant.

Co. l. 2. 23. b. 4. in Baldwins case.

29. In Baldwins case in the 2 Report, these Resolutions were agreed for Law; 1. As to things which take their essence and effect by the Delivery of the Deed without other ceremony, and which lye in Grant, when there is variance between the Premisses and the Habendum; In such case, the estate which so passeth by the Delivery of the Deed, and is most advantagious to the Grantee shall stand, and the other shall be void for the repugnancy; So if a man grants rent on Condition, &c. out of his Land by the Premisses of the Deed to a man and his Heirs, Habendum to the Grantee for years or life; in this case, the Habendum is repugnant, for fee passed in the Premisses by the delivery of the Deed, and therefore the Habendum for years or life is repugnant and void. 2. If a man by Deed grant a Rent in esse, or a Seigniory in the Premisses to one and his Heires, Habendum to the Grantee for years or for life, albeit another thing or ceremony is requisite (viz. Attornement) besides the delivery of the Deed, yet in as much as the thing lyes in Grant, and both the estates, viz. as well the estate in fee, as the estate for years or for life, ought to have one and the same ceremony (viz. Attornement) to passe it; for that cause (in such case) the Habendum is also repugnant and void. 3. When a man gives in fee by the Premisses, Habendum to the Lessee for life; in this case the Hebendum is repugnant and void, for one and the same ceremony (viz. Livery) is requisite to both the estates, and therefore when Livery is made according to the forme and effect of the Deed, it shall be taken most forcibly against the Feoffor, and most for the advantage of the Feoffee, and the Habendum (in such case) is repugnant and void, and untill Livery the Feoffee hath but an estate at will. 4. When to an estate limited by the Premisses a ceremonis Premiss & Habendum repugnant.

nowy is requiſite to the perfection of the Eſtate, and to the Eſtate limited by the Habendum nothing is requiſite to the perfection and eſſence thereof, but only the delivery of the Deed, there albeit the Habendum be of a leſſe Eſtate, then is mentioned in the premiſſes, yet the Habendum ſhall ſtand, and the premiſſes are repugnant and void, as it fell out in the principall caſe in Baldwins caſe; for A. coveriants, grants, and lets to farm to B. and C. and to the heires of C. to have for ninety nine years, &c. here the Eſtate for yeares limited by the Habendum took effect by the delivery of the Deed, whereas the Eſtate mentioned in the premiſſes could not take effect without Livery, and for that cauſe was adjudged repugnant and void.

Indictment repugnant. 30. Where a Wound was given the fourth of Auguſt, and the party dyed the nineteenth of December after, An Indictment againſt A. and B. as Abbettors to the Felony, was drawn in theſe words, Et præd. A. & B. tempore felonie & murdri præd. fact. viz. 4: Aug. &c. Felonice fuerunt preſentes, &c. ad felonian & murdrum præd. in forma præd: faciend: And this Indictment as to A. and B. the Abbettors, was adjudged inſufficient for the Repugnancy, becauſe no Felony was committed untill the death of the party, and none ſhall be adjudged a Felon by relation, which is but a Fiction in Law. Co. l. 4. 42. b. 2. *Heydons* caſe.

The like. 31. In an Appeale of Murder, the Wound was layd in the Count to be given at Weetwood, and the death to be at Weſtliborne, and then he concludes, Et ſic præd. L. O. apud Weetwood præd. modo & forma præd. the ſaid A. H. Felonice, &c. Murdravit. And it was reſolved, that the Count was repugnant and inſufficient, for it cannot be ſaid that he murdred him at the place where the wound was given, but where the party dyed. The like is adjudged in Wrotes caſe, Co. l. 4: a: 4. Co. l. 4. 42. b 4. *Humes* caſe.

Confirmation. 32. A Prebend leaſes for ſeventy yeares, the Deane and Chapter (being the Patron) confirme, dimiſionem præd. in the Forme aforeſayd, for one and fifty yeares, and no farther, this confirmes the entire Terme; for after the Terme is confirmed, one and fifty yeares are repugnant and void: It had been otherwiſe if they had recited the Leaſe for ſeventy yeares, and then confirmed the Land for one and fifty yeares. vide ſupra, 16. Co. l. 5. 81. a. 4. *Foords* caſe.

Conditions repugnant. 33. It hath beene ſayd, If a man make a gift in Taile upon Condition that he ſhall not make Feoffment, this is a good Condition, but if the Condition be, that he ſhall not make a Charter of Feoffment, this is not good, for this without Livery (as Littleton ſaith, fo. 19.) amounts but to a Tenancy at Will, which Tenant in Taile cannot be reſtrained to do: So if a man make a gift in Taile, upon Condition that he ſhall not make a Leaſe for his owne life, this is void and repugnant; for when a man makes a gift in Taile (which is an Eſtate of Inheritance, and by poſſibility may continue for ever) and thereby makes the Donee the Principall owner of the land, he cannot reſtraine him from doing any lawfull Act, or making any Eſtate, which is no Wrong to any, and which by the Law he may lawfully do or make: Howbeit, if a man make a Leaſe for Life or Yeares, with Condition that he ſhall not alien or demiſe, this is good, becauſe the Leſſor hath the Reverſion, whereby he hath power to reſtraine the Leſſee; ſo if a man demiſe a Copy-hold Mannor for Life or Yeares, with Condition, that hee ſhall make no voluntary Grant of any Copy-hold Lands, according to the Cuſtome of the Mannor, this is good: but if a man grant in taile a Copy-hold Mannor with ſuch a Condition, the Condition is void for the repugnancy. Co. l. 6. 41. b. 4. Sir *Anthony Mildmayes* caſe.

Co. l. 5. 61. a. 3. *Gateward's* case. Common.

34. It was alledged, that the Customs of the Town of S. was, that every Inhabitant within it had used, &c. to have Common (by reason of Commonancy) within a place in the Towne of H. which was another Towne, and it was adjudged insufficient for the repugnancy.

Co. l. 7. 25. a. 1. *Buts* case. Rent. A rent.

35. A. seised of black Acre in fee, and possessed of white Acre for years, grants a Rent-charge to B. for life out of both of them. A. distrains and avows in white Acre, concluding thus in his Plea: Virtute cujus he was seised in dominico suo ut de libero tenemento pro termino vitæ suæ, and the Avowry was adjudged insufficient and repugnant, because he could not have a Frank-tenement out of a terme for years: Derivata potestas non potest esse major primitiva, Max. 26.

Co. l. 8. 118. a. 2. in Doct. *Bonhams* case. Estoppel. Act of Parliament repugnant.

36. When an Act of Parliament is against common right and reason, or repugnant or impossible to be performed, the common Law shall controle and adjudge such an Act to be void, as the Statute of Vlist. 2. cap. 21. gives a Writ of Cessavit heredi petenti super heredem tenementum, & super eos, quibus alienatum fuerit hujusmodi tenementum, and yet it is adjudged in 33 E. 3. Tit. Cessavit 42. that the Heire should not have a Cessavit: The case was this, there were two Coparceners Lords, and Tenant by Fealty and certaine Rent, the one Coparcener hath Issue and dyes, in this case the Aunt and the Neice shall not ioyne in a Cessavit, because the heire cannot have it for the Cesser in the time of her Ancestors, in regard the arrearages do not belong to her, &c. (See F. N. B. 209. E. & Pl. Com. 110.) besides in a Cessavit the Tenant before Judgement may render the arrearages and damages, &c. and retaine the Land, and that cannot be done, when such an heire brings a Cessavit for the Cesser in the time of his Ancestor, because the arrearages then incurred belong not to him, as aforesaid.

Co. l. 8. 127. a. 1. The City of *London's* case. Prohibition repugnant.

37. Where there is a Market overt, and coʒrection in any, a Prescription to sell commodities in priuate houses or other places out of the open Market is repugnant and void, because to the seller may use deceit and is not subject to search, Qui male agit odit lucem, & omnia delicta in aperto leviora sunt, See 11 H. 6. 19. The Prior of *Dunstables* case.

Co. l. 9. 58. b. 3. *William Aldreds* case. Prescription for a way.

38. When a man hath lawfull easement or profit by prescription time out of mind, another Custome which is also time out of mind, cannot take it away, because that were repugnant, the one being as ancient as the other; as if a man hath a way over the Land of A. to his Franck-Tenement by Prescription time out of minde, &c. A. cannot alledge Prescription or Custome to stop the sayd way.

Co. l. 9. 109. b. 3. *Meriel Tresham's* case. Bar repugnant.

39. In Debt against an Administratrix, she pleads in Bar, Quod ipsa plene administravit omina bona, &c. quæ fuerunt, &c. & quod illa nulla habet bona, &c. quæ fuerunt, &c. nec habuit die impetrationis brevis, &c. præter bona & catalla ad valentiam, of the Kings debt, and of severall Recognizances, by which plea she confesseth, that she had sufficient in her hands to satisfie the sayd Debt and Recognizances; And then she pleads further, Quod ipsa nulla alia sive plura habet bona, &c. quæ fuerunt, &c. Præterquam bona & catalla, quæ non sufficiunt ad satisfaciendum Prod. seperalia debita: Which is clearly and Ex diametro repugnant to what she had confest before; and thereupon the sayd Bar was adjudged insufficient.

Co. l. 11. 80. b. 2. *Lewis Bowles* case. *Cui in vita* Contrariety.

40. A Feme brings a Cui in vita, quod clamat tenere ad vitam, and maintaines it in her Count by a gift en speciall Tail to her and her Husband, and that her Husband is dead without Issue, and the Writ abateth for the contrariety of the Title; for in the Writ she named her selfe but a bare Tenant for life, whereas in her Count it appeared, that she had such an Estate for life, which had greater Privileges incident unto it, then a bare Estate for life hath, Vide 18 E. 3. 37.

F. N. B. 21. b. Assignment Errors. Contrariety.

41. In a Writ of Error upon a Judgement given in the Common Bench,

Wherein, the Plaintiff cannot assigne for Error, that the Justices of the Common Bench did not give the Judgement, but that the Clarkes of the same house did it; Neither can he assigne for Error, that the Judgement was given for the Defendant, and that the Justices entred it for the Plaintiff, and gave Judgement for him; because such assignment is contrary to that which the Court doth as Judges.

Remainder limited upon a contrariety.

42. A Remainder limited upon a contrariety cannot be good, as in the case of Rickill in Littleton, S. 720. for when he had once made a Feoffment and vested the estate in one, he could not make that estate cease as to him, and cause it to remaine to another: So if Land be given to a man and his heires, so long as I. S. shall have heirs of his body, and if I. S. die without heirs of his body, that then it shall remaine to another in fee, this Remainder is void for the contrariety; because the first estate was Fee-simple determinable, upon which a Remainder cannot depend. Pl. Com. 19 b. 3. Colthirst and Bevisham.

The like.

43. If a Lease for life be made upon Condition, that if a Stranger pay to the Lessor twenty pounds, that then after the death of the Tenant for life, it shall remaine to the Stranger, this is a good Remainder, so if a Lease for life be made to Baron and Feme, and it is appointed by the said Lease, that if A. their eldest Son dye, living the Baron and Feme, that then it shall remaine to B. their second Son for life, this is also a good Remainder; for in these cases there is no contrariety, because in the first the Stranger shall have it expectely after the death of Tenant for life, and in the other it is intendable that B. shall have the Remainder after the death of Baron and Feme: But if a Lease for life be made upon Condition, that if a Stranger pay to the Lessor twenty pounds, that then immediatly the Land shall remaine to the same Stranger, this Remainder is void for the contrariety; because the Tenant for life ought to have it during his life, during which time the Stranger cannot have it. Pl. Com. ibid. & 32. a. 4. 34. b. 44

Proviso repugnant.

44. C makes B. and a Feme his Executors; provided that B. shall not administer his Goods, this Proviso is void for the repugnancy, for when C. had made them once his Executors, the severall powers limited to them afterwards are void, because when the intent of a man, who makes a Testament, agrees not with the Law, his intent shall be taken as void, as if a man devise to H. in fee, and if he dye without heire, that M. shall have the Land, this devise is void for the repugnancy as to M. for one Fee-simple cannot depend upon another Fee-simple, by the Law. 19 H. 8. Dyer 4. Pl. 10.

Condition void.

45. The Custome of London is, that a man may devise his Purchase Land in Portmaine, and a Purchase devised by his Will, that the Prior and Covent of Saint Bartholm. and their Successors should have the Land, Ita quod reddant annuatim Decano & Capitulo Sancti Pauli 16. Marc. And if they failed of payment, that their estate should cease, and that then the said Deane and Chapter should have it, and for the Condition broken those of Pauls entred; and it seemed clear to Baldwin and Fitzh. that the Condition was void, for no estate could remaine after the Fee simple given away, because the Feoffor had determined his Interest and Right, and then a Stranger could not enter for the Condition broken, but the heire ought to do it. Dyer 33. 12. 28, & 29 H. 8.

Escape.

46. In debt against the Sheriffs of London, for an escape of a Prisoner out of Ludgate, they plead, that three years before Jerveis and Curteis their Predecessors suffered the same Prisoner to escape to Lambeth in Surrey, he being then in their Ward in Ludgate Goale London, which is impossible; for the former Sheriffs could not let them go at large, when he was imprisoned and in their custody at the time of the escape, and then the escape ought to have been supposed in London, where the Prison was; for which repugnancy and other errors the Plea was adjudged void. Dyer 66. a. 11. 3 E. 6.

47. An

Dyer 68.b.28. 5 E. 6. 47. An Indictment of Murder was adjudged inſufficient, for that the place of the aſſault was ſet down, and not the place of the Murder, and theſe words, adhuc & Ibidem, inſerted in the Indictment, in caſe the Aſſault and Murder were acted at one and the ſame place; And this was for the uncertainty, becauſe the Aſſault and the Murder are of differing natures, and might be done at ſeverall places. Indictment

Dyer 209. 21. 3, 4 Eliz. 48. A Leaſe is made for years upon Condition, that if the Leſſor grant the Reverſion, the Leſſee ſhall have fee, the Leſſor levies a Fine, the Conuſee brings a Quid juris clamat, the Termor claimes fee, this is a Forfeiture, becauſe the Condition was repugnant: And note the Judgement there, that the terme ſhall be forfeit, the Conuſee might enter, and the Fine ſhall be engroſſed. Vide Plowd. Sanders againſt Freeman, and Pleſintons caſe, 6 R. 2. Condition repugnant.

Dyer 264. 40. 9 El. 49. Baron and Feme being Termors of the three Conyes in Fleet-ſtreet, the Baron leaſeth part of the terme by theſe words, the Meſſuage called the three Conyes with all the Chambers, Sellars, and Shops, except to the Baron the Shops, ad proprium opus & uſum, the Feme enters into the Shops, and then brings Ejectione firmæ, and per Curiam the exception is but temporary to the Baron himſelfe, there being no mention of Executors or Aſſignes, and alſo the exception is void for the Shops, becauſe repugnant to the demiſe of the Shops. Repugnant Leaſe.

Dyer 288. 54. 12 El. 50. If a common perſon grant the Manor of D. except the Courts and perquiſites, the exception is void for the repugnancy, and the Grantee ſhall keep Courts and have the perquiſites, notwithſtanding ſuch exception: Howbeit, it is otherwiſe in the Kings caſe. Vide Max. 81. 103. Exception repugnant.

Hob. 13. Sir *Daniel Nortons* caſe. 51. If an Under-Sheriff covenant with his High-Sheriff, that he will not execute any Writ of execution for any debt above twenty pounds, without ſpeciall Warrant from the High-Sheriff; This Covenant is void for the repugnancy: for albeit he may chuſe not to make an Under-Sheriff at all, or may make him at his will, and remove him alſo if he pleaſe, yet he cannot leave him an Under-Sheriff, and yet abridge his power, no more then the King may, in caſe of the Sheriff himſelfe. Vi. 65. 25. Sheriff and Under-Sheriff.

Hob. 39. *John Jon's* caſe. 52. An Office was found, that A. being ſeiſed of the Manor of D. in fee, enfeoffed B. in fee, to the uſe of himſelfe for life, the Remainder to C. in fee, and that A. being ſo ſeiſed of the Premiſſes, dyed thereof ſo ſeiſed; And this Office was adjudged void for the repugnancy. Office.

168. It will not drive a man to juſtifie or ſhew that, which he goeth about to defeate, or which makes againſt him.

Co. l. 7. 10. a. *Ugbtreds* caſe. 1. The Marquelle of Winchester grants the Captainſhip of a Fort, and for the exerciſing of that Office, and for finding a Gunner, and ſix Souldiers, he grants him an Annuity of two and thirty pounds yearly; upon Suit for this Annuity exception was taken to the count, for that the Plaintiff had not therein averred his exerciſing of the Office: but the exception was over-ruled by the Court; becauſe in all caſes when an Intereſt or Eſtate commenceth upon a Condition precedent, be the Condition or Act to be performed by the Plaintiff or Defendant, or any other, and be the Condition in the affirmative or negative, there the Plaintiff ought to ſhew it in his Count, and to aver the performance thereof, for then the Intereſt or eſtate commenceth in him by the performance of the Condition, and is not in him untill the Condition be performed; but it is otherwiſe when the Intereſt or Eſtate paſſeth Condition ſubſequent to be averred.

paſſeth preſently and veſts in the Grantee, and is to be defeated by matter, ex poſt facto, or Condition ſubſequent, be the Condition or Act to be performed by the Plaintiff or Defendant, or any other, and be the Condition in the affirmative or negative; In ſuch caſe the Plaintiff may count generally without ſhewing the performance thereof, and it ſhall be pleaded by him that will take advantage of the Condition or matter, ex poſt facto, for every one ought to alleadge that, which makes for him, and which is for his advantage, and no man ſhall be forced to alleadge that, which makes againſt him. Vide plus ibidem.

The like. 2. If I grant to one, that when he ſhall be promoted to a benefice, that then he ſhall have an Annuity; In this caſe, if he demand the Annuity, he ought firſt to ſhew that he is promoted to a Benefice; but if an Annuity be granted to one, untill he be promoted to a Benefice, in ſuch a caſe he ſhall have a Writ of Annuity, and ſhall not ſhew that he is yet promoted, becauſe the annuity precedes, and the promotion is ſubſequent, and goes in defeaſance of the annuity, and therefore ought to be ſhewed on the contrary part, and not by the Plaintiff, becauſe it makes againſt him, Vide 15 H. 7. fol. 1. Br. *Annuity* 22. & *Count* 43. & Co. l. 7. 26. b. Vpchurchs caſe. Pl. Com. 265 b 4. *Colthirſt* and *Beviſh.*

The like. 3. In Colth. and Beviſhams caſe, Pl. Com. The Grange was to remain to Peter Beviſham for life, Si vellet inhabitare, &c. durante termino, which was the whole Terme, and immediately after the death of Henry and Elizabeth, and therefore it was alleadged, that he ſhould have ſhewed in his bar the time of his entry, and his abode thereupon; but it was reſolved, that the bar was good notwithſtanding that exception, becauſe by common intendment it ſhall be taken, that his entry was immediately after the Remainder fell, and if it were not ſo, the Plaintiff ought to have ſhewed it, and not the Defendant in his Bar, becauſe it made againſt him, being in Defeaſance of his Eſtate, &c. Pl. Com. ibid. 26. b. 4. 30. a. 3. 32. b. 2. 34. a. 2.

Condition ſubſequent. 4. If I grant to one, that when he ſhall do ſuch an Act, that then he ſhall have a Rent charge out of my Land, in this caſe, he ſhall not avow for the Rent, unleſſe he firſt ſhew the performance of the Condition, for that enables him to the Rent; but if I grant to one out of my Land a Rent charge, upon Condition, that he ſhall do ſuch a thing, here he ſhall avow for the rent without ſhewing the thing to be done, for the Condition is ſubſequent and goes in defeaſance of the eſtate, which he that would have the eſtate to continue ought not to ſhew, becauſe it makes againſt him. Pl. Com. 30. a. 2. *Colthirſt* and *Beviſh.*

Copy-hold. 5. A Copy-hold Lord in ſuing for a Fine upon admittance, need not aver, that the Fine ſet upon the Copy-holder was reaſonable, becauſe that might perhaps make againſt him, if it ſhould be adjudged by the Court unreaſonable: but the unreaſonableneſſe of the Fine ought to be pleaded on the Copyholders part. Ho. 135. *Denny* and *Lemman.*

169. *Non poteſt adduci exceptio ejuſdem rei, cujus petitur diſſolutio.*

Vile diſcontinued. 1. If Tenant in tail of Lands make a gift in tail, or a Leaſe for life, rendring a rent, and dyeth, and the Iſſue bringeth a Formedon in the Deſcender, in this caſe, the Reverſion and Rent ſhall not bar the Demandant, becauſe by his Formedon he is to defeate the Reverſion and Rent. Et non poteſt adduci, &c. Co. Inſt. pars 1. b. 2.

Diſclaimer. Error. 2. If the Tenant diſclaime, he ſhall not have a Writ of Error againſt his Diſclaimer, becauſe by his Diſclaimer he hath barred himſelfe of his right in the Land; for the words of the Diſclaimer of the Tenant are, Nihil habet nec habere clamat in illa terra, nec die impetrationis brevis originalis, &c. habuit ſive clamavit, ſed aliquid in illa terra habere deadvocat & diſclamat; And againſt this he cannot have a Writ of Error Co. l. 8 61. b. 4. in *Beechers* caſe.

to

to have reſtitution of the Land againſt ſuch Diſclaimer. Vide 6 E. 3: 7. & F. N. B. 22. c.

170. None ſhall take exception to an Error or Act, which operateth to his own advantage.

Co. l. 3. 60. b. 4. *Lincoln Colledge caſe.* Collateral Warranty.

1. C. and F. Joynt-tenants for life, and to the heires of the body of C. intermarry, and have Iſſue E. who after the death of C. diſſeiſeth F. and ſuffers a common Recovery, F. releaſeth to the recoverors with Warranty and dyes, alſo E. dyes without Iſſue, and R. as heire male of the body of C. brings his Formedon in Deſcender; and here the queſtion was, whether or no the collaterall Warranty of F. did bar the Demandant, or that the heire in tail might have the Land by force of the Statute of 11 H. 7. 20 which gives Entry to the next Heire upon Diſcontinuance, &c. of the Inheritance of the Husband by the Feme: But it was reſolved, that this caſe was out of the intention of the ſaid Act, becauſe the intention of that Act was to reſtraine ſuch women to make Diſcontinuance, Warranty, or Recovery in bar, or prejudice of the heire in taile, or of them in Remainder, &c. but when the heir in tail himſelf conveys & aſſures the Land to others, the releaſe or confirmation of the Feme with Warranty is but to make perfect and corroborate the eſtate, which the heire in tail hath made, and therefore ſuch Warranty is not reſtrained by the ſaid Act; for it ſhall be intended for the benefit of the heirs in tail, and not to their prejudice: And this is alſo the reaſon, why a common Recovery in reſpect of the intended recompence was not reſtrained by the Statute of Weſt. 2.

Co. l. 8. 59. a 3 in *Beechers caſe.* Aſſignment of Error.

2. For the reverſall of a Judgement a man ſhall not aſſigne for Error, that which maketh for his advantage, as to alleadge that he was eſſoined, where he ought not to have been eſſoined, or that he had a longer day then the common day, or that he had aye granted to him, where it was not grantable, or the like. Vide 7 E. 3. 25. per Herle, 8 H. 5. 2. 11 H. 4. 8. F. N. B. 21. f.

Co. l. 11. 56. a. *Benhams caſe.* Inſufficient Verdict.

3. M. brings a Writ of Annuity againſt B. and they being at Iſſue, the Jury found for the Plaintiff, and alſo the arrearages, but did not aſſeſſe any damages or coſts; whereupon the Verdict was imperfect, neither could it be ſupplyed by a Writ to inquire the damages; Howbeit, afterwards the Plaintiff releaſed his damages and coſts, and thereupon had Judgement: whereupon the Defendant brings a Writ of Error, and aſſignes for Error, the inſufficiency of the Verdict, but the Judgement was affirmed, becauſe the Plaintiffs releaſe of the damages and coſts was for the Defendants benefit and advantage, and therefore ought not by him to be excepted againſt. Vide 22 Eliz. Dyer 369, 370. Where in a Writ of Ejectione Cuſtodiæ terræ & hæredis, the Jurors aſſeſſed damages intirely, which was inſufficient, for it lyeth not for the heire, yet the Plaintiff releaſed his damages and had Judgment for the Land: Note, that inſufficient Aſſeſſment of damages and no Aſſeſſment is all one.

F. N. B. 22. d. & 25. c. Attorney.

4. It is not Error to ſuffer one to make an Attorney in an Action, in which he ought not to make an Attorney, becauſe that is for his advantage.

171. Nemo

171 *Nemo tenetur armare adverſarium ſuum contra ſe.*

allenge. 1 He that challengeth a Juror for the hundred, or for Coinage, muſt ſhew in what hundred he hath no land, and how he is of kin, and ſhall not drive the other party to ſhew it. Co. Inſt. pars 1. 157. a. 2. & 4.

2 The Plaintif in a Replevin pleads in barr of an Avowrie for damage feſant, that he hath common of Paſture by cuſtom in the place where, &c. belonging to his Copyhold, which cuſtom was traverſed, and it was found that he had ſuch Common there, but withall that every Copyholder had uſed to pay time out of mind, &c. pro eadem communia unam Gallinam, & quinque ova annuatim; and it was adjudged, that upon this verdict the Plaintif ſhould have Judgement, albeit he omitted in his barr the yearly payment of the Hen and five eggs; And the reaſon was, becauſe the Plaintif was not bound to ſhew more than what made for him, and tended to his advantage. Co. l. 5. 78. b. 3. *Grayes* caſe.

172 It favoureth Diligence; And therefore hateth Folly and Negligence.

aſte. 1 Waſte may be done in houſes by ſuffering them (by negligence) to be uncovered, whereby the ſpars, rafters, planchers, or other timber of the houſe become rotten; So likewiſe if he ſuffer a wall of the ſea to be in decay, ſo as by the flowing and reflowing of the ſea the Meadow or Marſh adjacent is ſurrounded, whereby the ſame becomes unprofitable; Alſo the burning of an houſe by negligence or miſchance is waſte. Co. Inſt. pars 1. 53. a. 2. & b. 2.

aſte. 2 A prohibition of waſte did lye at the Common law againſt tenant by the Curteſie, tenant in Dower, and a Guardian in Chivalry, becauſe they were in by the Law; but not againſt tenant for life or years, becauſe they come in by the Act of the leſſor himſelf, and therefore it is imputed to his own folly and negligence, if upon granting the term, he have not ſufficient proviſion againſt committing of waſte, for in that caſe the Law did not aid him. Vide Co. l. 4. 62. b. 3. in Herlakendens caſe, & Co. l. 5. 13. b. 3. in the Counteſs of Salops caſe. Co. ibid. 53. b. 4.

uardian in ſcage. 3 If Guardian in ſeccage marry the heir under 14 years of age without a convenient fortune, he is compellable to make it good upon his accompt; for it will be imputed to his own folly, that he married him without proviſion of a convenient portion anſwerable to his eſtate. Co. ibid. 88. a. 3. Littl. §. 123.

ods gaged. 4 If goods be delivered to one as a gage or pledge, and he afterwards ſtollen from him, yet he ſhall be diſcharged of them, becauſe he hath a property in them, and therefore he ought to keep them no otherwiſe than as his own; but if he that gaged them tendred the money before the ſtealing, and the other refuſed to deliver them, then for this negligence and default in him he ſhall be charged with them. Co. ibid. 89. a. 4.

nder.

fault in re- actions. 5 In real actions where Voucher lyeth, if the Sheriff return that the Vouchee is ſummoned, and he make default, then a Magnum Cape ad valentiam is awarded, when if he make default again, then Judgement is to be given againſt the tenant; Alſo if the vouchee do appear, and after make default, then a Parvum Cape ad valentiam is awarded, and if he thereupon make default again, then judgment is to be given, as before. Co. ibid. 101. b. 4.

llein. e Lords ry. 6 If a Villein purchaſe land, and alien the land to another before Co. ibid. 118. a. 4. & b. 1, 2, Littl. §. 177.

the Lord enter; In that case, the Lord cannot enter, for it shall be adjudged his folly, that he entred not, when the land was in the Villeins hand: So it is likewise, if a freeman hath issue, and afterwards by confession becometh bond, and purchase lands in fee, and before the Lord enter he dieth seised, and the land descends to his issue, which is free, in this case also the Lord shall not enter: The like Law it is, if the land so purchased by the Villein escheat to the Lord of the fee before any entry made by the Lord of the Villein; as if the Villein dye without heir, or be convict or outlawed for felony; or if a recovery be had against the Villein in a Cessavit, or the like, in all such cases, it shall be imputed to the folly of the Lord of the Villein, that he entred not in time, when he might: Also if a Villein be disseised before the Lord doth enter, the Lord may enter into the land in the name of the Villein, and thereby gain the Inheritance of the land; but if there be a descent cast, so as the entry of the Villein is taken away, then the Villein must recontinue the estate of the land by judgement and execution, before the Lord of the Villein can enter: So if the Villein purchase lands in tayl and alien before the Lord enter, the Lords entry is taken away causa qua supra; but if the Villein dye, and his issue recover the land entayled in a Formedon, then the Lord may enter:

Co. ibid. a. The like law is also of Seigniories, Advowsons, Reversions, Remainders, Rents, Commons certain, and such like certain Inheritances: And all the reason of these cases is, (besides the Lords folly and negligence) because the Lord before his entry hath no interest, but only a bare possibility: Howbeit it is otherwise in the Kings case after office found, because nullum tempus occurrit Regi.

Co. ibid. 118. a. 4. & b. 3. Littl. §. 177. 7 If a Villein purchase goods or chattels, and sell or give them away before the Lord seise them, his title to the goods is gone, for the Law imputeth it to his folly and negligence, as before of lands, &c. for a bare claim of the goods of the Villein is not sufficient in Law, but he must seise some part in the name of all the residue, or that the goods be within the view of the Lord, for the claim and view amount to a seisure, as the claim of a Ward (being present) by word is a sufficient seisure, albeit the Guardian layeth no hands of him: And here under the name of goods and chattels are comprehended not only personal goods, as an Horse, a Cow, Houshold stuff, and the like; but also chattels real, as Wardships, Leases for years, Interests by Statute Staple, Statute merchant, Elegit, or the like: and the gifts aforesaid do not only extend to gifts in deed, but likewise to gifts in Law; And therefore if a Wife hath goods and taketh Baron, upon this gift in Law by force of the marriage, the land is barred; So likewise if a Villein having goods make his executors and dye, by this gift in Law the Lord is barred for his folly and neglect. Villein. The Lords seisure of Goods.

Co. ibid. 131. a. 4. 8 In an action where a Protection lyeth, if after it is allowed the party tarrieth in the Country without going to the service (for which he was relieved) above a convenient time after the Protection had, or otherwise withdraw himself from the service, upon Information thereof to the Lord Chancellor, he shall repeal the Protection in that case, by an Innotescimus. See the Statute of 13 R. 2. 16. Protection.

Litt. §. 161. Co. ibid. 173. a. 4. 9 If lands be given to a man in tayl, who hath as much Fee simple lands, and hath issue two daughters, and dye, and the daughters make partition, and the fee simple lands are assigned to the youngest daughter for her purparty, and the entailed lands to the elder, and the youngest daughter aliens the fee simple lands, and having issue dies: In this case the issue of the youngest daughter may enter into the moiety of the entailed lands notwithstanding such partition, for it will be imputed to the folly of the eldest daughter, that she agreed to such a Partition. Partition,

Partition, whereas she might have had upon the Partition the moyety of the one and also of the other; because in a writ of Partition she was not compellable to take the whole estate in tayl, but might have challenged moities in each, as aforesaid, and that ex provisione legis: But when she will not submit her self to the policy and provision of Law, but betake her self to her own policy and provision, there the Law will not aid her; So likewise if a man be seised of three Manors in fee of equal value, and taketh wife, and chargeth one of the Manors with a rent-charge, and dieth, the wife may by the provision of the Law take a third part of all the Manors, and hold them discharged, but if she will (in folly) accept the entire Manor charged, she shall hold it charged with the rent.

wer.

rtgage. 10 If the Mortgagee tender the money at the day to the Mortgagor, and the Mortgagee refuse it, and the Mortgagee thereupon enter, the Mortgagee is without remedy at the Common Law, for it will be imputed to his folly, that he refused it, when lawfull tender thereof was made unto him. Vide Max. 80. case 24. Littl. §. 335. Co. ibid. 207.

stard Mu- r. 11 If there be a Bastard eygne and Mulier puisne, and after the fathers death the Bastard enter, and peaceably enjoys the land without entry of the Mulier all his life, and having issue dieth seised; In this case the Mulier is barred for ever; for it is imputed to the folly and negligence of the Mulier, that he entred not during the life of the Bastard; and albeit the Mulier were under age, or covert baron at the time of the descent cast, or that after the death of the Bastard the Mulier entred before the heir of the Bastard, yet none of these cases shall aid or help the Mulier. Vide infra 25. Littl. §. 399. & 401. Co. ibid. 244.

ntry of feme vert. 12 If a Feme covert have title of entry into lands, and her husband neglects to do it, and during his life a descent is cast, yet after her husbands death the feme may enter notwithstanding the descent; But if a feme sole be seised of lands in fee and is disseised, and then taketh husband; In this case, the dying seised of the disseisor shall take away the entry of the wife after the death of her husband; because it will be accounted folly in the feme, as well for that she did not enter when she was sole, as that afterwards she took an husband, who would not enter before the descent cast: It is otherwise, if the woman were under age at her marriage, (for then it will not be imputed to her folly, but her husbands) or if the Land were entailed, and only discontinued. Co. ibid. 246. a. 3.

ontinual aim. 13 If a man be disseised, and the disseisor die seised within a year and a day after the disseisin made, whereby the tenements descend to his heir, in this case the entry of the disseisee is taken away; for the year and day shall not be taken from the time of his title of entry accrued, but only from the time of the claim by him made; and therefore it it will be accounted his folly, that he made not his entry immediately after the disseisin committed, which he ought to have done: Howbeit, this is now holpen by the Statute of 32 H. 8. cap. 33. for now by that Statute, if the disseisor dye seised within five years after the disseisin, though there be no continual claim made, it shall not take away the entry of the disseisin; but after the five years there must be such continual claim as was at the Common: Also that Statute extendeth not to any Feoffee or Donee of the disseisin, immediate or mediate, but they remain still at the Common Law, as they were before the making of the said Statute. Co. ibid. 353. b. 4. Litt. §. 426. Co. ibid. 256. a. 2. Littl. §. 440. Co. ibid. 261. b. 4.

emitter. 14 If tenant in tayl enfeoff his heir apparent, the heir being of full age at the time of the feoffment, and after the tenant in tayl dyes, this is no remitter to the heir, because it was his folly, that he being of full age would take such a feoffment; for albeit the heir apparent might have Littl. §. 664. Co. ibid. 350. b. 2.

have ſome ben eſtr there by in the life of his anceſtor, yet was he by taking ſuch a feofment (beſides his own) ſubject during his life to all charges and incumbrances made or ſuffered by his anceſtor: Howbeit, it is otherwiſe, if he were under age, in reſpect of his tender years and want of experience.

Litt. §. 682. Co. ibid. 358. b. 4. 15 If tenant in tayl hath iſſue two ſons of full age, and he demiſeth the land to the eldeſt ſon for life, the remainder to the younger ſon alſo for life, and dies: In this caſe the eldeſt ſon is not remitted, becauſe it was his folly to take ſuch an eſtate of his father, which created a fortious feeſimple; but if the eldeſt ſon die without iſſue, the younger ſon ſhall be remitted, becauſe no folly can be imputed to him, for that the franktenement was caſt upon him by force of the remainder. Remitter.

Litt. §. 725, 726. Co. ibid. 380. a 16 At the Common Law before the Statute of the 11 H. 7. 20. if tenant in Dower or for life had alienes the land with warranty, and the warranty had deſcended upon the heir, reverſioner, or remainder-man, being yet under age; In ſuch caſe they might have entred upon the alienee, becauſe no lacheſs or folly could be adjudged in them (being under age) that they did not enter in the life time of the terretenant: But if the heir, reverſioner, or remainder-man were within age at the time of the alienation, and becoming of full age in the life of ſuch terretenant, did not enter, they were barred by ſuch warranty, becauſe it was imputed to their folly, that they being of full age entred not in the life time of the tenant in Dower or for life. Warranty a barr entry.

Co. l. 1. 177. b. 1. in *Mildmayes* caſe. 17 Where a leaſe is void in Law, yet if one ignorant of the Law taking upon him to know the Law, and meddling in a matter, that he hath nothing to do withall, will report and affirm openly, that ſuch a leaſe is good, to the prejudice of anothers title, that other may have an action upon the caſe againſt the reporter, and recover damages according to his prejudice, for in ſuch caſe Ignorantia Juris non excuſat. Slander.

Co. l. 2 26. b. 3. in the caſe of *Bankrupts*. 18 By the Statute of 13 El. 7. diſtribution is to be made to all the creditors rate and rate-like, viz. to ſuch of them as are willing to come in as Creditors; but a Creditor, that either obſtinately refuſeth, or careleſly neglects to come before the Commiſſioners, and pray the benefit of the Statute, ſhall not be admitted to have any ſhare with the reſt, for vigilantibus & non dormientibus Leges ſubveniunt. Bankrupt.

Co. l. 3 9. a. 2. in *Bevills* caſe. 19 Seiſin of one yearly ſervice is not ſeiſin of another yearly ſervice, as if there be Lord and tenant by fealty, rent of 10 s. and three work-days yearly, ſeiſin of the rent is not ſeiſin of the work-dayes, neither is ſeiſin of the rent, ſeiſin of ſute of Court, which is annual, *Vide* 16 El. Dyer 330. d. And the reaſon is, becauſe it ſhall be imputed to the folly of the Lord, that he did not obtain ſeiſin of that, which was yearly due unto him; and beſides, it would be miſchievous to the tenant, for peradventure in antient time the work-days were diſcharged, which now cannot be ſhewed, whereupon might enſue ſutes and trouble. Lord and tenant.

Co. l. 7. 6 a. 3. in *Sindls* caſe. 20 If a man be robbed in his houſe in the day time or in the night, the Hundred, in which that houſe is ſituate, ſhall not be charged therewith; for albeit the words of the Statute of Wincheſter are general, without mentioning any place in ſpecial, yet ſuch Robbery is not within the ſaid Act, for divers reaſons, amongſt which this is one, viz. becauſe the houſe of every one is his caſtle, which he ought to keep and defend at his peril; and therefore if any be robbed in his houſe, it ſhall be imputed to his own negligence and default. Robbery.

Co. l. 8. 72. b. 2. in *Greneleys* caſe. 21 By the Statute of 32 H. 8. c. 28. Diſcontinuance by fine by the husband of the wifes lands, ſhall not barr her entry after his death, yet if ſhe make not her entry within five years after her husbands death, Entry by Feme.

ſhe

she shall be barred by the Statute of 32 H. 8. cap. 36. notwithstanding the said Statute of 32 H. 8. 28. for it will be imputed to her folly, that she did not enter within the time limited by 32 H. 8. 36.

l, Mesne, nt.

22 If there be Lord, Mesne, and tenant, and the Lord distrains the tenant for rent arrear, &c. in this case, the tenant ought to request the Mesne to put his cattel into the pound, and thereby release the tenants and if the Mesne refuse so to do, or otherwise acquit not the tenant, by payment of the rent, &c. the tenant may have a writ of Mesne, &c. but if the tenant will replevy the Cattel and have deliverance of them himself, and then the Lord avow upon a stranger, In this case the tenant is without remedy by his own default, for it will be accounted folly in the tenant, that he did not request the Mesne to acquit him as aforesaid. Co. 9. 23. a. 1. in the case of *Avowrie.*

oner.

23 A Prisoner cannot wage his law for meat and drink had of the Gaoler, because the Gaoler being enjoyned by Law to keep the prisoner in salva & arcta custodia, is compellable to find him victuals; But if a Victualler or an Innkeeper bring an action of debt for the victuals delivered to his Guest, the Guest may wage his Law, for the Victualler or Innkeeper is not compellable to deliver his victuals to his Guest, until he be paid for them; and therefore it is his folly to part with them, until he hath mony in hand for them. Co. 9. 87. b. 4. in *Pinchons* case.

-keeper.

ft.

ne advow-

24 If a feme purchase an Advowson, and takes baron, and the Church is void, and the baron suffers an Usurpation; In this case, the feme, if she had presented before, is put to her writ of right of Advowson, but if she had not presented before, she is without recovery; for it will be attributed to her folly, that she took such an husband, as would not present upon the avoydance, but suffer an usurpation. It is otherwise if the Advowson came to her by descent. Vide Max. 114. case 52. F.N.B. 34. f.

ard, Mu-

r.

25 If a man hath issue a Bastard, and dieth, and the Bastard entreth and dieth seised, and the land descendeth to his issue; in this case the Collateral heir of the father is bound, as well as where the father hath two sons, Bastard eigne, and Mulier puisne; So likewise if a man hath issue two daughters, the eldest being a Bastard, and they enter and hold the land peaceably as heirs, now the Law in favour of legitimation, doth not adjudge the whole possession in the Mulier (who then had the only right) but in both, so as if the Bastard hath issue and dieth, her issue shall inherit; and in the same case if both daughters enter and make partition, this partition shall bind the Mulier for ever. Vide supra 11. Co. Inst. pars 1. 244. a. 4.

oviso upon

e of land.

26 A bargainée of land for 600 l. by another Indenture covenants to make back to the bargainor and his heirs such assurance of the land, as the Council of the bargainor should devise within the year next ensuing, provided, that if the vendée made default in the assurance, if he then should not pay 500 l. to the vendor, that he would stand seised to the use of the vendor, the vendor tenders no assurance, and the 500l. is not paid; In this case, the vendée hath the right of the land; for it was the folly of the vendor, that he required not the Assurance. Winsors case. Dyer 361. 9. 20 Eliz.

173 *Negligentia semper habet infortunium Comitem.*

aches.

1. Regularly, no laches or negligence shall be accounted in Infants or femes covert for non entry or claim to avoid descents, yet laches shall be accounted in them for non-performance of a condition annexed to the estate of the land; for if a feme be enfeoffed either before or Co. Inst. pars 1. 246. b. 2.

after marriage, reſerving a rent, and for default of payment a re-entry: In that caſe, the laches of the baron ſhall diſherit the wife for ever: And ſo it is of an Infant, his laches for non-performance of a condition annexed to an eſtate, either made to his anceſtor, or to himſelf, ſhall barr him of the right of the land for ever: And therefore if a man make a feoffment in fee to another reſerving a rent, and if he pay not the rent within a moneth, that he ſhall double the rent, and the feoffee dieth, his heir within age, the Infant payeth not the rent, albeit the Infant at this day ſhall not by this laches forfeit any thing; yet in ſuch caſe a feme covert ſhall; and the reaſon and cauſe of this diverſity is, for that the Infant is provided for by the Statute of Merton cap. 5. Non current uſuræ contra aliquem infra ætatem exiſten. &c. but before that Statute he could not have avoided ſuch a penalty; neither yet doth that Statute extend to a feme covert, or to a condition of a re-entry, which an Infant ought to perform, becauſe the breach thereof cannot be properly called uſura.

Co. ibid. 250. b. 4. 2 If the father be diſſeiſed, and make claim, and the diſſeiſor dieth, & then the father alſo dieth; In this caſe, his heir may enter, becauſe the deſcent was caſt in his fathers time, and the right of entry, which the father gained by his claim, ſhall deſcend to his heir: But if the father make continual claim and dieth, and the ſon make no continual claim, and within the year and day after the claim made by the father the diſſeiſor dieth, this ſhall take away the entry of the ſon, for that the deſcent was caſt in his time, and the claim made by the father ſhall not avail him, that might have claimed himſelf; becauſe no continual claim can avoid a deſcent, unleſs it be made by him, that hath title to enter, and in whoſe life the dying ſeiſed was: The ſame likewiſe holdeth in all reſpects of the predeceſſor and ſucceſſor: Alſo if tenant for life make continual claim, this ſhall not give away benefit to him in the remainder, unleſs the diſſeiſor died in the life of the tenant for life, cauſa qua ſupra. Continual claim.

Co. ibid. 252. a. 3.

Co. l. 5. 13. b. 4. in the Counteſs of *Salops* caſe. 3 Upon Bailment of goods to keep, where there is a confidence put in the Bailee, an action upon the caſe will lie for negligence, notwithſtanding the delivery of them by the Bailor; As in 12 E. 4. 13. A man delivers an horſe to another to keep ſafely, the defendant equum illum tàm negligenter cuſtodivit, quod ob defectum bonæ cuſtodiæ interiit; here an action upon the caſe lyeth for the breach of the truſt repoſed in the Bailee: ſo likewiſe in 2 H 7. 11. If my ſhepherd, whom I truſt with my ſheep, by negligence ſuffers them to be drowned, or otherwiſe to periſh, here alſo an action lies. Bailment of goods.

Co. l. 5. 109 a. 4. in *Foxley's* caſe. 4 By the default and negligence of the owner of goods waived in not making freſh purſute after the felon and proſecuting him in an appeal of the ſame felony, he ſhall loſe his property in them, and the King ſhall have them as goods waived, and this courſe is ordained by the Law to prevent felonies; for Intereſt reipublicæ ut maleficia remaneant impunita, & impunitas ſemper ad deteriora invitat: Also if the owner be negligent, and omit any of the goods ſtollen from him out of his appeal, the King ſhall likewiſe have the goods ſo omitted, becauſe perhaps by leaving them out the felon might have eſcaped. Goods waived.

Co. ibid. 109 b. 4.

Co. l. 5. 110 b. 4. 5 If a man upon an appeal or indictment of felony be ſo negligent, that he comes not in, but tarries the Exigent; In this caſe, albeit he be afterwards (when he comes in) acquit of the felony, yet he ſhall forfeit his goods to the King for ſuch his default and neglect. Exigent.

Co. l. 6. 45. b. 4. in *Huggs* caſe. 6 In 17 E. 3. 24. In debt upon an obligation of 20 l. judgement was obtained before the Maior of Newcaſtle, and execution had thereupon, and becauſe the obligation was not quaſht (as it ought to have been) the uſe was then, being the Plaintif had judgement in another Two judgements.

action

action upon the same obligation; And the defendant upon pleading the first judgement could not be relieved, because it was imputed to his negligence, that he did not procure the obligation to be cancelled upon the first Judgement. Vide 17 E. 3. 24.

Copyhold. 7 Tenant by Copy in fee (where the custom is, that the heir within three Courts and proclamations made, shall be barred, if he claims not) dies, his heir being then beyond sea, and until the three Courts and proclamations be past, but then returns and claims his right; In this case, he shall not be barred, no more than by non-claim upon a fine; but if he went beyond sea after the death of his ancestor, he shall be barred, because of his neglect to take admittance of his Copyhold before he went his Journey. Co. l. 8. 100. b. 3. in Sir *Rich. Lechfords* case.

Repair of sea banks. 8 If one be bound by prescription to keep a sea-bank in good repair, and by a sudden and unusual encrease of waters it is beaten down; in such case the Commissioners of Sewers, by the Statute of 23 H. 8. 5. may charge all other persons and their lands, that may receive any loss or damage thereby; but if any default or negligence be found in him that should so repair it, as that he hath not kept the banks so high nor so well in repair as they have used formerly to be kept; or that the danger was not so inevitable but that he might well have prevented it, the Commissioners may charge him only with the repair thereof, and if by his negligence the danger becometh inevitable, or he be not able to repair it, so as the charge is laid upon others, each person so charged may have an action upon the case against him, that should so repair it, and recover damages according to their loss. Co. l. 10. 139 b. in *Kighleys* case.

Quare Impedit. 9 In a Quare impedit, if the defendants clerk was admitted and instituted at the time of the writ purchased, and the Plaintif purchase the writ only against the Patron, not naming the Incumbent, albeit the Plaintif recover, yet he shall not avoid the defendants clerk, because he neglected to insert his name in the Quare impedit. F. N. B. 35. c.

Quare Imp. 10 In a Quare impedit, if the Patron being defendant makes default to the distress, and the Incumbent abate the writ by plea, yet there shall be no writ awarded to the Bishop or the Patron by reason of his default and negligence. F. N. B. 38. h.

Lord. Villein. 11 Upon a nativo habendo brought by the Lord, the Villein sues a libertate probanda, & obtulit se at the fourth day against the Lord, who did not appear but make default, upon which default the Villein was enfranchised, & had a writ to the Sheriff, that the Sheriff should not suffer the Lord to vex him afterwards: so if the Lord be non-suite after appearance, the Villein or Niefe shall be infranchised. F. N. B. 77. h. & 78. f.

Audita Qu. 12 Upon an Audita querela sued, the plaintif shall have a supersedeas in the same writ to cease execution; but if he be nonsuite, he may have a new Audita querela, but then he shall not have a supersedeas to stay execution. F. N. B. 104. o.

Attaint. 13 Nonsuite in attaint after appearance is peremptory, and so likewise is a Retraxit entred of Record, so as the plaintif in attaint shall not bring a new attaint afterwards. F. N. B. 108. d.

Non-sute. 14 At the day of the return of the Habeas corpus, or Distringas, if the Jury and defendant appear; albeit the writ be not returned, yet if the Plaintif make default he shall be nonsuite, because the parties have day by the Roll. Quære, nam dubitatur in Banco Regis. Dyer 286. 44: 12 El:

Ward. 15 The Queen grants the ward of the body of A. who dyes at full age, no tender of Marriage being made by the grantee; In this case the land shall not be retained in Curia Wardorum, for it was his folly and negligence not to tender a Marriage. Dyer 306. 65 14 El:

Debt against the heir. 16 In debt upon an obligation against the daughters and heirs of Hennigham entred into by their father, the Plaintif recovered upon Nihil Dyer 344. 1: 18 Eliz.

Nihil dicit, and hath general judgement: Afterwards upon the Scire facias to have execution, the defendants pleaded riens per deſcent in fee the day of the firſt writ purchaſed or ſince: Howbeit the opinion was, that after recovery by Nihil dicit, non ſum informatus, or confeſſion, the heir comes too late to plead riens, &c. but he ought at firſt to plead or ſhew the certainty, when, &c. And per Dyer, if the profits received after the death of the anceſtor until the writ purchaſed, were ſufficient to ſatisfie the debt, that then the plaintiff ſhould have generall judgement againſt the heir.

Dyer 357. 45. 19 El.

17 If an Alien born pray not medietatem linguæ before the Venire facias is awarded, he comes too late after, for non conſtat Curiæ, that he is an Alien. Spinolaes caſe. Alien.

174 *Vigilantibus non Dormientibus Leges ſubveniunt.*

Co. Inſt. pars 1. 139. b. 1.

1 At the Common Law upon every continuance or day given over before judgement, the plaintiff might have been nonſuited, and therefore before the Statute of 2 H. 4. cap. 7. after verdict given, if the Court gave a day to be adviſed, at that day the plaintiff was demandable, and might have been nonſuited, for vigilantibus non dormientibus, &c. Non-ſuit.

Co. l. 4. 82. b. 3. in Sir *Andrew Corbets* caſe.

2 A. deviſeth land to B. till 800 l. be raiſed for the preferment of his daughters, & dies, C. the heir of A. conceals the will, enters, & dieth: In this caſe B. ſhall have allowance for the time that the will was concealed; but albeit B. had not notice of the will, yet if a ſtranger had occupied the land, the deviſee ought to take notice of the deviſe at his peril; for vigilantibus non dormientibus, &c. And in ſuch caſe none is bound to give him notice. Deviſe. Notice.

Co. l. 5. 76. a. The Earl of *Pembrooks* caſe.

3 Where the defendant ſhewes a deed to the Court, the plaintiff may pray the ſame Term, that it may be entred in hæc verba, And ſo he may demurr, or take iſſue at his pleaſure; But if he neglect to pray it that term, he ſhall never have it ſo entred afterwards. Deed entr.

Co. l. 7. 27. b. Sir *Hugh Portmans* caſe.

4 In a Quare impedit if the plaintiff be nonſuite after appearance, or diſcontinue the ſute, that is peremptory, and the defendant becomes Actor, and ſhall immediately have a writ to the Biſhop, &c. Quare impedit.

Co. l. 6. 8. b. 1 in *Ferrers* caſe.

5 At the Common Law before the Statute of Weſtm. 2. cap. 4. If any had ſuffered a Recovery in any real action by default (if he were lawfully ſummoned, and there were no error in the proceeding) he could not have (the caſe of an Infant only excepted) any remedy, but by writ of right; And therefore the writ of Quod ei deforceat was by that Statute given to tenant in tayl, by the Curteſie, in Dower, and for life, after recovery had againſt them by default. Recovery by default.

F.N.B. 20. g.

6 In a writ of Error, when the record is come into the Court, if the plaintiff all that Term do not aſsign his errors, and albeit he then aſsign the errors, yet if he do not then alſo ſue out a Scire facias ad audiendum errores againſt the defendant returnable the ſame term or the next term following, all the matter is diſcontinued. Error.

Dyer 232. 9. 7 Eliz.

7 An Infant at full age brings an Audita querela in Chancery to avoid a recogniſance in the nature of a Statute Staple by him made within age, but becauſe his age was to be tried by the inſpection of the Court, it was adjudged, that it did not lie; ſo alſo it had been, if he had died within age: for in ſuch caſe he ſhould have brought the Audita querela before his full age. Infant.

Dyer 241. 48 7 Eliz.

8 A Quare Impedit iſſued againſt the Archbiſhop of Canterbury, the Biſhop of Lincoln, and the Incumbent, who made default to the great diſtreſs, whereupon the plaintiff made title, that he might have a writ Quare Im.

ſo

to the Bishop, and a writ was awarded to enquire de damnis, de plenitudine, ad cujus præsentationem, quantum temporis elabitur a vacatione, et quantum Ecclesia valet per annum, all which points were returned by inquisition, and accordingly Judgement was given, that the plaintif should recover the presentment, and should have a writ to the Bishop of Lincoln, and damages to the value of the Church by half a year, and the defendants in misericordia.

Error. 9 If a writ of Error be delivered to the Chief Justice of the C. B. or the Clerk of the Treasorie there, this is a Supersedeas in Law, and a stop to award execution; Howbeit, if the plaintif do not crave the removal of the record before the return of the writ of Error, the Justices may then award execution. Vide 6 H. 7. 16. Dyer 244. 63. 8 Eliz.

175 It favoureth speeding of mens Causes; And therefore

Protections, 1 In antient time, when Noblemen and others purchased by Letters Patents from the King protections, either Profecturæ, or Moraturæ, to go or remain beyond the Grecian sea, or elsewhere, they were also by other Letters Patents to purchase licence to make their general Attorneys in all Courts, so as no actions or suites should be thereby delayed, which Britton commends to be bien et sagement fait, fol. 282. Co. Inst. pars 1. 130. b. 4.

Protection. 2 In an Assise of Novel disseisin a Protection is not allowable, nor yet in a Certificate upon an Assise, because an Assise is festinum remedium to restore the disseisee to his freehold, whereof he is wrongfully and without Judgement disseised: And therefore in this action the defendant shall not be essoined, nor pray in aid but only of the King, nor vouch a stranger, nor any party to the writ, unless he will immediately enter into the warranty; there is the same Law also of receipt; neither shall the Paroll stay for the non-age either of the plaintif or defendant, and in many other respects an Assise is remedium maximè festinum. Co. ibid. 131. a. 1. Co. l. 8. 50. a. 2. in *John webbs* case.

Dower. Appeal. Assise. 3 In Dower, or in appeal brought by the feme of the death of her husband, or in an Assise brought by a feme, which was the wife of B. if the tenant or defendant plead, that the baron is in full life, the tryal thereof shall not be by the Jury, but by the Justices upon examination made before them, and that course is taken for the greater expedition. Co. l. 9. 30. b. 3. in the case of the Abbot of *Strata Marcella*.

Nonage inspected. 4 If the tenant in a real action vouch A. as heir within age, or if the tenant for life be impleaded and pray in aid of A in reversion within age, and pray also, that the Paroll may demurr, &c. In both these cases, if the demandant reply, that he is in full age, this shall not be tried by the Country for the great delay of the demandant, but a writ of Venire facias shall issue to the Sheriff to bring A. before the Justices to be inspected by them, whether he be of age, or no. Co. l. 9. 30. b. 4. The same case

Assise. 5 Of all actions an Assise is most favoured in Law, because it gives the most speedy remedy. And therefore the Statute of Westm. 2. cap. 25. saith of it, & quia non est aliquod breve in Cancellaria per quod querentes habent tam festinum remedium sicut per breve novæ disseisinæ, &c. And as the Law favours an Assise, so likewise it favors all such things, as may speed and expedite it, and abhors any thing, that may hinder or retard it; And therefore upon a bare surmise, that the Sheriff is allyed to either party, the writ shall be at first directed to the Coroners, and this shall be no exception to abate the writ, and many other exceptions, which abate other writs, shall not abate an Pl. Co. 75. b. 4. *wimbish*, and the Lord *Willoughby*. Pl. ibid. 89. b. assise of Fresh force in *London*.

Aſſiſe, becauſe it is much favoured in Law by reaſon of the expedition and diſpatch, which accompanies it, and wherein the Law takes much delight and ſatisfaction. Vide Dyer 84. b. 83.

Co. Inſt. pars 1. 155. a. 7. 6 Albeit the writ of Aſſiſe command the Sheriff, Quod faceret duodecim liberos et legales homines de vicineto, &c. videre tenementum, &c. yet by antient Courſe the Sheriff muſt return 24, and this is for expedition of Juſtice; for if twelve ſhould only be returned, no man ſhould ever have a full Jury appear or be ſworn (in reſpect of Challenges) without a Tales, which would be a great delay of trials. Aſſiſe.

176 Hateth Delayes.

Co. Inſt. pars 1. 32. b. 4 1 Some ſay, that the demandant in a writ of Dower, who procureth or ſuffereth delays in that ſute, ſhall not recover damages. Dower.

Co. ibid. 126. b. 4. 2 The cauſe of an Amerciament in a plea real, perſonal or mixt (where the King is to have a fine) is for that the tenant or defendant ought to render the demand (as he is commanded by the Kings writ) the firſt day, which if he do, he ſhall not be amerced; ſo as for the delay which the tenant or defendant doth uſe, he ſhall be amerced. Amerciament.

Co. ibid. 128. a. 4. 3 If the defendant plead in diſability of the perſon an Outlawry of the ſame Court, he ſhall not need to ſhew it forth preſently, or if he plead an outlawry in bar, and it be denied, then he ſhall have a day to bring it in; But if he plead an Outlawry, and offer withall to ſhew it to the Court, he muſt ſhew forth the record of the Outlawry maintenant ſub pede ſigilli; becauſe the plea is but dilatory. Outlawry.

Co. ibid. 158. a. 2. 4 After challenge to the Array, and trial duly returned, if the ſame party takes a challenge to the Polls, he muſt ſhew cauſe preſently; ſo if a Juror be formerly ſworn, if he be then challenged, the party challenging muſt ſhew cauſe preſently, and that cauſe muſt riſe ſince he was ſworn; likewiſe when the King is party, or in an appeal of felony, the defendant, that challengeth for cauſe, muſt ſhew his cauſe preſently. Challenge.

Co. ibid. 161. a. 3. 5 To Counterplead the plaintif in an Aſſiſe, by which he is delayed, maketh him, that pleadeth it, a diſſeiſor: Otherwiſe it is, if he had pleaded Nul tort, &c. Counterpla.

Co. ibid. 260. b. 3. 6 If a man be out of the Realm, and a recovery be had againſt him in a Præcipe by default; In this caſe, he ſhall not avoid ſuch recovery; becauſe by ſuch means a man might be infinitely delayed of his freehold and Inheritance, whereof the Law hath ſo great regard; and few or none go over, but of their own free will, neither is he in ſuch caſe without his ordinary remedy, either by his writ of an higher nature, or by a Quod ei deforceat: Howbeit it is otherwiſe of outlawry in a perſonal action, for de minimis non curat lex, and he ſhould otherwiſe be without remedy: Alſo as to a recovery, there is a difference betwixt being beyond ſea, and impriſonment, &c. Recovery. Outlawry. Impriſonment

Co. ibid. 390. b. 3. 7 If a man be convicted of felony by verdict, and delivered to the Ordinary to make purgation, he cannot be vouched; for that the time of his purgation (if any ſhould be) is uncertain, and the demandant cannot be delayed upon ſuch an incertainty; beſides the tenant is not without remedy, for he may have his warrantia cartæ. Voucher.

Co. l. 4 35. b. 1. in *Bowns* caſe. 8 If the King grant a protection in a Quare Impedit, or an Aſſiſe with a non obſtante of any Law to the contrary, that grant is void; for by the Common Law a Protection lieth not in either of theſe caſes, for the damage that may happen to the plaintif by ſuch great delay, and a non obſtante cannot avail, when by the Common Law the King cannot grant the thing it ſelf. Protection.

9 The

.36 E. 3. 9 The Statute of 36 E. 3. Stat. 1. cap. 13. which gives traverses to offices of lands seised into the Kings hands shall be taken generally according to the letter and intention of the said Act, because it is for the advancement and execution of Justice against grievous and tedious delays. Co. l. 4. 58. a. 2. in the Sadlers case.

admittend. 10 In a Quare Impedit if the defendant do not come in at the distress returned against him, the plaintif shall have a writ ad admittendum clericum directed to the Bishop, without making any further title. F.N.B. 38. n.

cedendo. 11 If the Judges of any Court (as well of record as other) do delay the party plaintif or defendant, and will not give judgement for him, when they ought to do it; In this case, the party grieved may have a writ de procedendo ad judicium directed to such Judges or Justices, and thereupon an alias and pluries, if they will not proceed to give Judgement, and after that an attachment (if they please) directed to the Coroners, and returnable into the Kings Bench or Common Pleas. F.N.B. 153. b, c, d.

ise. 12 The Law favours all things, which have speed and expedition in them, and abhors all delayes, which retard or delay Justice; and therefore an Assise (which by the Statute of Westm. 2. cap. 25.) is said to be festinum remedium, is much favoured in Law; so as a writ of Assise upon a bare surmise shall be at first directed to the Coroners, without first directing it to the Sherif, and then upon a challenge to the Array to have it afterwards directed to the Coroners, which is the ordinary course for other writs. Pl. Co. 75. b. 4. *wimbish* & the Lo. *will.*

177 Unnecessary Circumstances; And therefore, *Frustra fit per plura, quod fieri potest per Pauciora.*

he entry of e issue conable after scontinuace.

1 In a præcipe, where the demandant is to recover damages, if the tenant plead non-tenancy or disclaim, there the demandant may aver him to be tenant of the land, as the writ supposeth, for the benefit of his damages, which otherwise he should lose, or otherwise he may pray judgement and enter, at his election: but where no damages are to be recovered, as in a Formedon in descender, and the like, there he cannot averr him tenant, but pray his judgement and enter; for thereby he hath the effect of his sute, and Frustra fit per plura, &c. And therefore if tenant in tail discontinue, and his issue bring a Formedon against the discontinuée, and the discontinuée pleads that he is not tenant, but utterly disclaims in the tenancy of the land; In this case, the judgement shall be, that the tenant shall go without day, and after such judgement the issue may enter into the land, notwithstanding the discontinuance. Co. Inst. part 1. 362. b. a. Littl. §. 691.

)ne parent erter than wo.

2 When the King was to grant a reversion, the antient form was to recite the first grant, and then to grant the reversion, and besides by another patent to grant the lands in possession, by which way a good estate passed to the patentee; Howbeit, to pass these several grants in one and the same patent, is as good and effectual in Law, as to pass them in several patents; and frustra fit per plura, &c. Co. l. 8. 167. a. 1. in the Earl of *Cumberlands* case.

leisure.)ffice.

3 If the Office of the Marshalsie be forfeit, the King shall be in possession thereof by seisure without office; so it is also of the Temporalties of a Bishop, or of a Prior Alien; because the certainty of these appear in the Exchequer, & frustra fit, &c. In some cases also the King shall be in possession by office without seisure, as of lands, tenements, offices, &c. which are local, and whereof continual profit may be taken, as where it is found by office, that a condition is broken, or that Co. l. 9. 95. b. 3. in Sir *Geo. Reynolds* case.

that one attainted of felony is ſeiſed of land, &c. or in caſe of the ward of land, &c. In all theſe caſes the King is in poſſeſsion by office without any ſeiſure.

2 H. 6. 1. b. Finch, fol. 54. 4 One that is in Court ready to joyn with the defendant may do it without proceſs, as the vouchee (the leſſor of the plaintif being prayed in aid of) when the defendant in a replevin avows upon him; or the Meſne, when the Lord paramount avows upon him: but joynder in aid cannot be by Attorney without proceſs. Vouchee.

Co. l. 5. 21. Sir *Anthony Maines* caſe. 5 M. leaſes for 21 years unto S. and covenants to make a new leaſe to S. upon the ſurrender of the old, M. leaſes to another by fine for 8. years, and hereupon S. without ſurrender of the old leaſe brings an action of Covenant againſt M. In this caſe, the covenant is broken, albeit S. do not ſurrender (which ought to be the firſt act) becauſe it were in vain for him to do it, in regard M. hath diſabled himſelf to take the ſurrender, or to make a new leaſe. Covenant to ſurrender.

4 E. 3. 170. 6 The demandant may waive iſſue upon Counterplea of voucher, and grant the voucher; for if the Enqueſt paſs, the tenant cannot have more. Waiver of iſſue.

1 H. 6. 4. b. 7 One that is a debtor to the King of Record in the Exchequer, if he be ſeen in Court, may be brought in to anſwer without proceſs. Kings debt.

Dyer 59. 1. 14. 36 H. 8. 8 In Replevin the defendant hath return awarded upon Nonſuite of the plaintif, and upon Returno habendo the Sheriff returns averia elongata per Querentem, and thereupon Withernam is awarded, and the defendant hath delivered unto him as many of the plaintifs goods, whereupon the Plaintif is to ſue a ſecond deliverance; In this caſe, he ſhall ſue the ſecond deliverance for the firſt diſtreſs, and not for the Cattel delivered upon the Withernam, for the Cattel of the firſt diſtreſs (being the cauſe of the Withernam) being delivered, the other upon the Withernam will be alſo diſcharged. Replevin.

Dyer 192. 24. 2, 3. El. 9 The Sheriff of Midd. had an attachment of privilege againſt one Kemp, and likewiſe a Capias ad ſatisfaciendum againſt him at the ſame plaintifs ſute, both returnable the ſame term into the C. B. but the attachment was returnable firſt; upon which he brings his body into Court, and ſaid he would return the Ca. ſa. at the day of return thereof: Howbeit, upon motion of one of the Protonotaries, the Juſtices ſent the defendant to the Fleet, and diſcharged the Sheriff of him, and would not ſtay untill the return of the Ca. Sa. there being a former judgement againſt him upon Record. Vide Dyer 214. 47. *Cap. ſaiſa.* & an attachment.

Dyer 204. 1. 2. Eliz. Upon nihil dicit in waſte, a writ iſſueth, that the Sheriff in propria perſona accedat ad locum vaſtatum, to enquire of the damages, and it was held good, and not to enquire of the waſte, for that was confeſt by the Nihil dicit; neither is it in ſuch caſe neceſſary, that he ſhould then go in perſon, according to Weſt. 2. cap. 25. for that is only in vaſto inquirendo, where the Defendant makes default to the diſtreſs. Waſte.

178 *Expedit Reipublicæ, ut ſit finis Litium.*

Co Inſt. p. 1 s. 103. a. 1. 1 Regularly, an Abbot, Prior, Biſhop, or other ſole Corporation cannot diſclaim, or do any act to the prejudice of their houſe or benefice, but what may be avoided by the ſucceſſor; yet if an Abbot, Biſhop, &c. acknowledge the action in a writ of Annuity, this ſhall bind the ſucceſſor, becauſe he cannot falſifie it in an higher action, and Expedit reipublicæ, ut ſit finis Litium. Vide ſupra Max. 1. caſe 4. & 93, 10. So it is likewiſe in an action of debt upon an Obligation, Statute, or Recognisance; for there muſt be an end of ſutes, and Res judicata pro veritate accipitur. Abbot. Annuity.

2. If

Challenge. 2 If the plaintif allege a cauſe of challenge againſt the Sheriff, the proceſs ſhall be directed to the Coroners, and if any cauſe againſt any of the Coroners, proceſs ſhall be awarded to the reſt, if againſt all of them, then the Court ſhall appoint certain Eliſors or Elliors (ſo nanamed of the French word eſlire, to chooſe, becauſe they are named by the Court) againſt whoſe return no challenge ſhall be taken to the array: Howbeit, challenge may be yet made to the Polles, but that ſhall be alſo preſently examined and ſetled in Court: For Expedit reipublicæ, &c. Co. ibid. 158 a. 3. 18 E. 4. 8.

Partition. 3 A partition of intailed lands betwéen parceners, being equal at the time of the partition, ſhall bind the iſſues in tail for ever, albeit the one do alien her part. See Dyer P. 1 Mar. 98. b. pl. 52. Co. ibid. 173. b. 1.

Rolls. Records. 4 The Rolls of a Court of Record being the Records and memorials of the Judges of the ſame Courts, import in them ſuch incontrollable credit and veritie, as they admit no averment, plea, or proof to the contrary; And if ſuch a Record be alleged, and it be pleaded that there is no ſuch record, it ſhall be tried only by it ſelf; And the reaſon hereof is apparent, for otherwiſe (as our old Authors ſay, and that truly) there ſhould never be any end of Controverſies, which would be inconvenient: Howbeit, during the Term, wherein any Judicial act is done, the Record remaineth in the breſt of the Judges of the Court, and in their remembrance, and therefore (in ſuch caſe) the Roll is alterable during that term, as the Judges ſhall direct; but when that term is paſt, then the Record is in the Roll, and admitteth no alteration, averment, or proof to the contrary. Co. ibid. 260. a. 2.

Fines. 5 At the Common Law before the Statute of Non-claim 34 E. 3. cap. 16. after a fine levied of land, if a ſtranger having title thereunto had not made claim within a year and a day after ſuch fine, he had been barred for ever, and the reaſon thereof was alleged to be, Quia finis finem litibus imponebat: but this is now helped by the Statute of 4 H. 7. 24. which gives 5. years after the fine and proclamations. Co. ibid. 262. a. 1. Litl. §. 441.

Extent. 6 Before the Statute of 32 H. 8. 5. if an extent had been inſufficient in Law, there might have iſſued out a new extent; But it appears by the Preamble of the ſaid Statute, and alſo by divers Books and reſolutions of the Judges, that (before that Statute) after a full and perfect execution had by extent returned and of Record, there could never be any re-extent upon any ejection: And there are many inconvenences yet, which are not remedied by that Statute; for which ſee Co. ibid. fol. 289. & 290. Vide ſupra, 32, 21. Co. ibid. 290. a. 4. Co. l. 5. 87. a. 3. in *Blumfields* caſe.

Judgement final. 7 Where the judgment is to be final, there the Oath of the Grand Aſsiſe or Jury ought to be abſolute, and not to their knowledge; as in a writ of right, when the Miſe is joyned upon the méer right, or in an Attaint, or in wager of Law; for the judgement in every of theſe three is final. Co. Inſt. par. 1. 294. a. 4.

Judgement in a Grand Aſsiſe. 8 In a writ of right when the Miſe is joyned upon the méer right, and the tenant tenders a Demy mark, that the grand Aſsiſe may alſo inquire, whether the demandants anceſtor were ſeiſed in the time of the King, as he had Counted; In this caſe, albeit the verdict of the Grand Aſsiſe be given only upon this laſt point, yet judgement final ſhall be had thereupon: ſo it is likewiſe if the tenant after the Miſe joyned make default, or confeſs the action, or if the demandant be non-ſuit, and yet in none of theſe caſes they of the Grand Aſsiſe give their verdict upon the méer right; but the reaſon is, becauſe the Law aims at peace and quiet, and that there might be an end of ſuits and controverſies. Vide F. N. B. 5. n. Co. ibid. 295. b. 2.

Plea. 9 Every plea that a man pleadeth ought to be triable, for that without trial the cauſe can receive no end, Et expedit reipublicæ, &c. Co. ibid. 303. b. 1.

Co. ibid. 369. b. 1. 10 If there be tenant for life the remainder in fee by lawfull and juſt title, he in the remainder may obtain and get a pretenced title of any ſtranger (notwithſtanding the Statute of 32 H. 8, 9.) not only becauſe the particular eſtate and the remainder are all one, but for that it is a meanes to extinguiſh the ſeeds of troubles and ſutes, and cannot be to the prejudice of any. Pretenced titles.

Co. l. 4. 15. b. 1. in *Stanhop & Blithes* caſe. 11 If one tell another that he is perjured, or that he hath forſworn himſelf in ſuch Court, theſe words are actionable, becauſe by theſe words it appears, that he hath forſworn himſelf in a Judiciall proceeding: but words of heat and paſſion, as to ſay to one, that he hath forſworn himſelf, or that he is a Ribbin, Rogue, Mariet, or the like, by theſe or ſuch like words an action ought not to be maintained, for Boni Judicis intereſt lites dirimere; And the rather, becauſe ſuch friboulous actions are now more frequent than they have been in former ages, Et malitiis hominum eſt obviandum. Vide 188. 1. Slanderous words.

Co. l. 5. 77. b. *Samons* caſe. 12 The plaintif and defendant ſubmit themſelves to the arbitrement of A. who awards, that the defendant ſhall enter into bond, that the plaintif and his wife ſhall enjoy certain lands quietly; this award is void, becauſe the uncertainty of the ſum, wherein the defendant ſhall be bound, may be an occaſion of a new ſute and controverſie, for that the Arbitrator not naming the ſum, he cannot aſsign his power to the plaintif, defendant, or any one elſe to do it. Arbitrement.

Co. l. 5. 91. b. 3. in *Semayns* caſe. 13 When any houſe is recovered by any real action, or by Ejectione firmæ, the Sheriff may break open the houſe, and deliver the ſeiſin or poſſeſsion thereof to the demandant or plaintif, (for the words of the writ are Habere facias ſeiſinam, or poſſeſſionem, &c.) becauſe otherwiſe there would be no end of ſuch ſutes; and after judgement it is not (in right and judgement of Law) the houſe of the tenant or defendant. Seiſin, or poſſeſſion by the Sheriff.

Co. l. 6, 7. a. in *Ferrers* caſe. 14 When one is barred in any action real or perſonal by judgement upon demurrer, confeſsion, verdict, &c. he is barred as to that or the like action of the ſame nature for the ſame thing for ever; for Expedit Reipublicæ, &c. Vide ſupra, 93, 9. Barr in actions.

Co. l. 6. 9. b. 1. in *Ferrers* caſe. 15 At the Common Law before the Statute of Marlebridge, cap. 29. if land had been conveyed out of the degrees, ſo as the demandant could not have a writ of Entry in the per, or in the per and cui, the demandant was put to his writ of right; for there was no writ of Entry in the Poſt before it was given by the ſaid Statute; And the reaſon why the law was ſo before that Statute, was, quod ſit finis litium, and that he that right had ſhould not be negligent, but take his remedy by writ of Entry before there ſhould be more than two alienations. Writ of Entry in the Poſt.

Co. l. 6. 45. 2. 3. *Higgens* caſe. 16 In debt upon an obligation the defendant pleads, That the plaintif hath recovered upon the ſame bond, and that the judgement thereupon is removed by Error into the Kings Bench, and was not yet reverſed; And this was adjudged a good plea, becauſe the judgement takes away the ſtrength of the bond, and if after judgement he might ſue the ſame party upon the ſame bond, he might do it infinitely, and (conſequently) the defendant might be infinitely amerced; for upon every Judgement the defendant ſhall be amerced, and if he be a Peer of the Realm, the amerciament is 100 s. and ſo the defendant might be infinitely amerced upon one and the ſame obligation, which would be miſchievous, Et intereſt Reipublicæ ut ſit finis litium. Judgement barr to the bond.

Co. l. 7. 43. *Kynns* caſe. 17 A bill of reviver upon a bill of reviver ſhall not be ſuffered for the infiniteneſs, no more than a writ by Iourneys accompts upon a former writ of the ſame nature, for ſo they might be had infinitely. Bill of reviver.

18 A

ettry. 18 A Barrettor is in judgement of Law accounted one of the moſt dangerous and pernicious vermin in the Commonwealth, becauſe whereas the Law endeavoureth to ſettle peace and amity, and to ſuppreſs diſcord and contention, he is ſeminator litium, & oppreſſor vicinorum ſuorum, either by force and open Maintenance of poſſeſſions, or the like, or by fraud and malice under colour of Law, as by multiplicity of unjuſt and feigned ſutes, Informations, or the like, to the end he may by that means enforce poor people (ad redimendum vexationem) to give him money, or otherwiſe to compound with him, &c. Co. l. 8. 37. in the caſe of *Barretry*.

itrement. 19 Upon an award albeit the parties do not diſcover all their differences to the Arbitrators, ſo as they determine ſome, and leave the reſt undetermined, yet the award is good; becauſe otherwiſe many Arbitrements might be avoided, for the one or the other of the parties may conceal a treſpaſs done to him, or ſome other ſecret cauſe of action, and ſo avoid the Arbitrement, which were inconvenient, for Expedit reipublicæ, &c. C. l. 8. 98. a. 4. in *Baſpoles* caſe.

cord. 20 Accords are much favoured in Law, becauſe they prevent and compoſe ſutes and controverſies amongſt neighbours (Et concordiâ parvæ res creſcunt, diſcordiâ maximæ dilabuntur) And therefore it was adjudged P. 3 Jac. rot. 1033. that an Accord with ſatisfaction was a good plea in barr, in Eden and Blakes caſe. Co. l. 9. 79. b. 4. in *Peytocs* caſe.

nes. 21 The general Statute of 32 H. 8. 36. of Fines ſhall bind the King, though he be not named, becauſe it was ordained for the ſetling and quieting of eſtates, and the prevention of debates and controverſies in the Commonwealth, in Magdalen College caſe. Co. l. 11. 75. a. 1.

ſets deſcend a barr. 21 The Statute of Gloceſter in 6 E. 1. cap. 3. ordains, that where tenant by the curteſie aliens his wives inheritance with warranty, if aſſets deſcend from the heir, he ſhall be barred for the value of the inheritance ſo deſcended, and if lands after deſcend, that then the tenant ſhall recover againſt the heir of the ſeiſin of his mother, viz. out of the reſidu of his mothers lands ſo much as the aſſets afterwards deſcended ſhall amount unto: Here, albeit at the making of this Act (being in 6 E. 1.) there were no intailed lands (for all Inheritance was then, (viz. before Weſtm. 2. being 13 E. 1.) feeſimple abſolute or conditional) yet intailed lands are ſince taken to be within the equity of the ſaid Act of Gloc. but not to retain or recover the lands intailed, but only the lands which ſhould ſo deſcend; becauſe otherwiſe there would be occaſion of new ſutes and contention, which the Law hates and abhors; for if the tenant after aſſets deſcended might retain or recover the lands intailed, then if the aſſets were aliened, the ſame inheritable to the eſtate tail might by writ of Formedon in deſcender recover the intailed lands again, which would beget a new ſute, and no way anſwer the Intention of the ſaid Act, being (indeed) a good proviſion for feeſimple lands, but not for lands entailed, without ſuch a conſtruction by equity, as aforeſaid; And therefore in caſe of entailed lands ſo aliened with warranty, the tenant ſhall have a Scire facias out of the Rolls of the Juſtices, before whom the ſute depends, to recover the lands deſcended according to the proviſion of the ſaid Act of Gloceſter; which in juſt and proportionable equity agrées with the caſe of the feeſimple lands, and the Intention of the ſame Act. Vide ſupra 15. 9. & infra 186. 8. Co. l. 52. b. 4. in *Syms* caſe. Pl. Co. 110. *Fulmerſtons* caſe.

179 Circuit of Action.

Co. Inſt. part 1. 265. a. 3.

1 Littleton ſaith, §. 446. If the father be diſſeiſed, and the ſon (having only a poſsibility) releaſe to the diſſeiſor without warranty, ſuch releaſe is void; Howbeit, if there be a warranty annexed to the releaſe, then the ſon ſhall be barred; for albeit the releaſe cannot barr the right, becauſe the ſon had no right in the land in the life of the father, yet the warranty may rebut, and barr him and his heirs of a future right, which was not in him at that time: And the reaſon (which in all caſes is to be ſought out) wherefore a warranty being a covenant real, ſhall barr a future right, is for avoiding of circuit of action, which is not favoured in Law, viz. That he who made the warranty ſhould recover the land againſt the Terre-tenant, and then the Terre-tenant by force of the warranty ſhould have as much land in value againſt the warrantor, which courſe would occaſion Circuit of action, and more trouble than needs. Rebutter.

Mauxels caſe, 7. b. Finch.

2 Where the father enfeoffeth his ſon and heir apparent with warranty, and dieth, the ſon in a præcipe brought againſt him may immediately vouch his fathers feoffor, for the Law will not ſuffer him to vouch himſelf, according to Max. 54. and ſo, when he comes in as vouchee, he may barraign the firſt warranty, to avoid Circuit of Action. Finch. fol. 14. Fr. Edit. Vouche.

F. N. B. 18. f.

3 In falſe Judgement againſt an Abbot, the plaintif was non-ſuite, and the Abot had a Scire facias againſt the plaintif to ſhew cauſe, why he ſhould not have execution returnable quindena Paſchæ, at which day the plaintif appears and aſsigns his errors, and tenders ſecurity to ſue cum effectu, and prays a Scire facias againſt the Abbot ad audiendum errores, and the opinion of the Court was, that he might aſsign his errors againſt the Abbot, without ſuing out any Scire facias againſt him. Falſe judgement.

Finch, pag. 55.

4 In an action of waſte upon a leaſe for years by deed, wherein the leſſor granteth to the leſſee, that he ſhall not be impeached of waſte, the leſſee may plead this in barr of the action of waſte, without bringing his action of Covenant. Waſte.

Finch, ibid.

5 Upon the grant of a ward with warranty, the defendant in a writ of right of ward, may rebut the plaintif by that warranty, and ſhall not be driven to bring an action of Covenant upon the grant, to avoid circuit of action.

Finch, fo. 14. Fr. Edit.

6 One that hath rent iſſuing out of land diſſeiſeth the terre-tenant, in an Aſsiſe by the diſſeiſee the diſſeiſor ſhall recoup the rent in the damages: and the reaſon is for avoiding circuit of action; for otherwiſe when the diſſeiſee re-enters, the action for the arrerages of rent ſhall be received; but Circuitus eſt evitandus, & boni Iudicis eſt lites dirimere, ne lis ex lite oriatur. Vide Co. l. 5. 31. a. 2. in Coulters caſe. Recouper.

180 Matter of Vexation; And therefore

Co. Inſt. part 1. 127. a. 1.

1 If the demandant or plaintif be non-ſuite, or judgement given againſt him, he ſhall be amerced pro falſo clamore, for vexing and troubling the tenant or defendant without juſt cauſe. Plaintif amerced.

Co. l. 5. 73. b. The caſe of *Orphans.*

2 If any Orphan of London, which by the cuſtom of that City is under the government of the Maior and Aldermen there, ſue in the Eccleſiaſtical Court, or in the Court of Requeſts, &c. for any goods, money Orphans.

money or chattels due unto them, either by the cuſtom of London, or by any deviſe or legacy in the will of their Anceſtor, or to have accompt, &c. In ſuch caſe, a prohibition lyeth; becauſe the government of the Orphans of London belongs to the Maior and Aldermen of that City, and they have Juriſdiction of them: And (per Popham) if the Lord of a Manor hath probate of teſtaments within his Manor, if any will prove ſuch a will in the Eccleſiaſtical Court, a prohibition lies, becauſe the juriſdiction thereof belongs to another: And the reaſon of this is, for that otherwiſe the party might have double vexation and trouble.

Judgement drowns a bond. 3 Where a man hath judgement upon an Obligation, he ſhall not afterwards bring an action of debt upon the ſame obligation againſt the ſame party; not only becauſe the judgement hath drowned the bond by changing it into a matter of record, but likewiſe for that if he that ſo recovers might have another new action and another new judgment, he might alſo (by conſequent) have infinite actions and infinite judgements, to the perpetual vexation and charge of the defendant, and infinitum in lege reprobatur: And therefore if a man brings an action of debt upon an Obligation, and is barred by the judgement, as he (ſo long as that judgement ſtands in force) cannot have a new action; Pari ratione, when he hath judgement in an action upon the ſame Obligation, ſo long as that judgement ſtands in force, he ſhall not have a new action. Co. l. 6. 45. a. 3. *Higgins* caſe. Co. ibid. 46. a. 2.

Sue in two Courts. 4 If any uſe the Countenance of Law (which was inſtituted to prevent, and make an end of controverſies and vexation) for double vexation, he ſhall be fined: As if a man ſue in the Common pleas, and afterwards for the ſame cauſe ſue the defendant in London, or any other Court, the plaintif ſhall be fined for this unjuſt vexation, 9 H. 6. 55. 14 H. 7. 7. And in a Recaption the plaintif ſhall recover damages, and the defendant ſhall be fined, and impriſoned for his double vexation. Vide F. N. B. 71. & f. m. & infra, 181. 7. Co. l. 8. 60. a. 3. in *Beechers* caſe.

5 In good diſcretion no melius inquirendum ſhall be awarded after office found againſt the King, without view of ſome Record, or ſome other pregnant matter for the King, to avoid further vexation of the ſubject: And therefore where upon a Diem clauſit extremum it was found, that the land was held of the Queen, ſed per quæ ſervitia Jurators ignorant, and thereupon a melius inquirendum awarded, whereby the tenure was found of a ſubject, and all other points certainly found; In this caſe the firſt office was adjudged void by the ſence of 2 & 3 E. 6. and the rather, becauſe it ſhould give no further occaſion of vexing the ſubject, for that the uſual courſe was upon a double Ignoramus to adjudge a tenure for the King in Capite. Co. l. 8. 169. a. 4. in *Paris Stroughters* caſe. Dyer 292. pl. 71. 12 Eliz.

181 *Pendente Lite nihil innovetur.*

Quare Impedit. 1 At the Common Law, if hanging a Quare Impedit againſt the Ordinary for refuſing the Patrons Clerk, and before the Church were full, the Patron had brought a Quare Impedit againſt the Biſhop, and hanging the ſute, the Biſhop had admitted and inſtituted a Clerk at the preſentation of another; In this caſe if judgement were given for the Patron againſt the Biſhop, the Patron might have had a writ to the Biſhop, and removed the Incumbent, that came in pendente lite by uſurpation, for pendente lite nihil innovetur; And therefore at the Common Law it was good policy to bring the Quare Impedit againſt the Biſhop as ſpeedily as might be. Co. Inſt. part 1. 344. b. 3.

Co. l. 115. b. *Foliambs* caſe. F.N.B. 60 a. Eſtrepment.

2 In Real actions depending, as Formedon, dum fuit infra ætatem, writ of right, or the like, the tenant ſhall have a writ of Eſtrepment, to inhibit the tenant from committing waſte or eſtrepment, hanging the ſuit; the like writ alſo may be had after judgement, and before execution. Vide the Statute of Glocester, 6 E. 1. cap. 13. It lyeth alſo in an action of waſte; and the words of the writ are, Tibi præcipimus, quod ad meſſuagium prædi. perſonaliter accedens coraliter ordinari facias, quod vaſtum ſeu eſtrepamentum de eodem meſſuagio, contra formam Statuti prædict. non fuit, pendente placito prædi. indiſcuſſo.

Co. l. 6. 29. b. 3. Preſentation.

3 In Dyer 339. 87 Eliz. A preſentation obtained of the Queen, hanging a Quare Impedit, in right of the Queen, was adjudged void. In Greens caſe.

F.N.B. 20. c. Error.

4 In a writ of Error after errors aſſigned and ſcire facias awarded againſt the defendant upon ſuch aſſignment, the plaintif ſhall not aſſign any error in fact, as to allege that the plaintif in the other action was dead at the time of the judgement, or before the judgement, or the like; And when the plaintif may aſſign errors in fact, he ſhall aſſign but one error of that kind, but he may aſſign as many errors as appear in the record, becauſe this ſhall be tried by the Juſtices in Court, but that by a Jury, which innovation will much delay and prejudice the defendant in the writ of error.

F.N.B. 37. f. & Ne admittas.

5 In a Quare impedit, or darrein preſentment, if the plaintif ſuſpect, that the Biſhop (hanging the plea) will admit the defendants Clerk, the Law gives the plaintif a writ of Ne admittas within the ſix months, to inhibit the Biſhop ſo to innovate, to his prejudice, hanging the plea: The words of the writ are theſe; Prohibemus vobis ne admittatis perſonam ad eccleſiam de B. quæ vacat, ut dicitur, & de cujus advocatione contentio mota eſt in Curia noſtra inter A. & B. donec diſcuſſum fuerit in eadem Curia, ad quem eorum pertineat ejuſdem eccleſiæ Advocatio.

F.N.B. 43. i. Prohibition.

6 If a man ſue a Quare Impedit, and deliver it upon record, as he may, and after the defendant or his clerk ſues a Citation againſt the preſentee of the plaintif; In this caſe, the plaintif in the Quare Impedit ſhall have a prohibition in the Common Place, before the return of the Quare Impedit, becauſe it appears upon record, that ſuch a Quare Impedit is depending.

F.N.B. 48. o. Quare incumbravit.

7 If a man hath a Quare impedit, and he ſue a Ne admittas to the Biſhop, and after the Biſhop encumbers the Church within the ſix monthes with his own Chaplein, or with the Chaplein of the defendant; here, the plaintif ſhall have a writ of Quare incumbravit, to prevent ſuch diſturbances hanging the ſuit in the Quare Impedit.

F.N.B. 71. e. f. m. Recaption.

8 If a man diſtrain for rent or ſervice, and after (hanging the plea) diſtrains again for the ſame rent or ſervice; In ſuch caſe he that is ſo diſtrained ſhall have a writ of Recaption, and ſhall recover his damages for the ſecond diſtreſs ſo taken, and he that diſtrained ſhall make fine for the wrong he hath done, albeit the firſt diſtreſs was lawfully made, and the rent is ſtill in arrear.

182 Infiniteneſs and multiplicity of ſuits.

Co. Inſt. part 1. 56. a. 2. Co. l. 5. 73. a. 3. in *Williams* caſe. Publique nuiſance.

1 Where is a diverſity between a private way, which ſerves for a private mans uſe or occaſion, and a publique way, which is a Common paſſage; for if a man be interrupted in a private way, he ſhall have an action upon his caſe, and recover damages according to his prejudice: But if the way be a Common way, and any man be diſturbed

to

to go that way, or if a ditch be made overthwart the way, so as a man cannot pass, yet he shall not have an action upon his case; and this the Law hath provided for avoiding multiplicity of suites, for if any one man might have an action, all men might have the like: But the Law for this common nusance hath provided an apt remedy, and that is by presentment in the Leet or in the Turn, unless any man have a particular damage, as if he and his horse fall into the ditch, whereby he receiveth hurt and loss, there for this special damage, which is not common to others, he shall have an action upon the case: And all this was resolved in the Kings Bench 27 H. 8. 27. And in that case it was said, that it had been adjudged in that Court between Westbury and Powell, that where the Inhabitants of Southwark had by custom a watering place for their cattel, which was stopped by Powell, that in that case any Inhabitant of Southwark might have an action; for otherwise they should be without remedy, because such a nusance is not presentable in the Leet or Turn.

2. 2 In an action against two, if one of them plead to the writ, and the other to the action, the plea to the writ shall be first tried; for if that be found, all the whole writ shall abate, and make an end of the business: So likewise in a Personal action against two defendants, if one defendant pleads that which extendeth only to himself, and the other plead a plea which goeth to the whole, this last plea shall be first tried, and if that be found for the defendant that pleaded it, that shall discharge both, and the particular plea of the other defendant shall not be tried; for example, if one of the defendants in trespass pleads a release to himself (which in Law extends to both) and the other pleads not guilty (which extends but to him that pleads) the plea which goeth to the whole and dischargeth both, shall be first tried; for if that be found, it maketh an end of the suite, and the plea of the other defendant shall not be tried; Howbeit, the Law is otherwise in Real action, for which vide ubi supra. Co. Inst. pars 1. 125. b. 3.

escent a full ury. 3 If a recovery be had by A. against B. and before execution B. die seised, this descent shall not take away the entry of the Recoveror, and so it is also in case of a fine; for if that were admitted, there would be no end of suite, but a new one would be occasioned: So likewise if a recovery be had against tenant for life, where the remainder is over in fee, tenant for life dieth, he in the remainder entreth before execution, and dieth seised; here also the entry of the Recoveror is lawfull, not only because he in the remainder is privy in estate, but likewise for that otherwise it would occasion a new suite: Howbeit, the Law is otherwise of an Advowson, because at the Common Law every presentation to a Church did put the rightfull Patron out of possession, and did put him to his writ of right, whether the presentation were by title or without. Co. ibid. 237. b. 4.

hings in tion. 4 The Common Law, for avoiding of Maintenance, suppression of right, and stirring of suites at Law, hath provided, that nothing in action, entry or re-entry, shall be granted over, because under colour thereof pretended titles might be granted to great men, whereby right might be trodden down, and the weak oppressed, which the Common Law abhorrs; as also that men should grant any thing before they be in possession thereof, which might occasion suites and troubles. Co. ibid. 214. a. 3.

Divine service. 5 A man that by prescription hath had Divine service celebrated, & the Sacraments administred upon every Sunday and Holiday at his Chapel within the Manor of D. for his own family, upon failer thereof may have an action upon the case against the Chaplein that neglects to perform it, because such a prescription will be intended to commence Co. l. 5. 73. *Williams* case.

commence by ſome grant: But when the Chapel is not a private Chapel for him and his family only, but publique and common to all his tenants of the ſaid Manor, which may be many; In ſuch caſe no action of the caſe lyeth for the Lord; for then every tenant may alſo have an action upon his caſe, as well as the Lord, and ſo there might be infinite actions for one default; neither yet are they in ſuch caſe without remedy, for they may and ought to ſue in the Court Chriſtian, and there ſhall have it redreſſed.

Co. l. 5. 104. b. in *Boulſtones* caſe. 6 A man cannot have an action upon the caſe for damage by the Pigeons of a Dove-houſe, becauſe then every man might have the like; And therefore it hath been held, that if any man (except the Lord of a Manor) erect a Dove-houſe, it is preſentable in the Leet; Sed quære de hac, for it hath been ſince otherwiſe adjudged; See the E. of Northumberlands caſe, Poph. Rep. 141. Trin. 16. Jac. Dove-houſe.

Prat and *Sternes* caſe.

Co. l. 6. 8. b. 4. in *Ferers* caſe. 7 If the plaintif be barred by judgement, upon demurrer, confeſſion, or verdict, in perſonal actions he is barred for ever, and in real actions he muſt have recourſe to his action of an higher nature, and at laſt ſhall be finally barred in his writ of right, if the Grand Aſsiſe find againſt him: So likewiſe (before the Statute of Marlbridge) where the degrees were paſt, and (before the Statute of Weſtm. 2.) upon loſs by default, there was no remedy but by writ of right: And the reaſon of the Common Law in theſe and the like caſes, was to avoid multiplicity and Infiniteneſs of ſutes, trials, recoveries, and judgements in one and the ſame caſe; And therefore in the judgement of the Law it was thought more profitable for the Commonwealth, and more for the honour of the Law, (in ſome caſes) rather to leave ſome without remedy, and to put others to their writ of right, without any reſpect of Coverture, Infancy, or the like, than that there ſhould not be a convenient time for the ending of actions and ſutes: See the judgement in rediſſeiſin and poſt diſſ. F. N. B. 188, 190. and the puniſhment inflicted by the Law in ſuch caſe; See alſo the Regiſter 206. & 208. And (indeed) without ſuch a ſtrict courſe there may be much oppreſsion committed under colour and pretence of Law; for ſo a rich and malitious man may by actions and ſutes infinitely vex him that hath right, and in the end (for the avoiding of charge and vexation) Compell him to forſake his right, all which was remedied by the Rule and Reaſon of the antient Common Law, the neglect whereof (by introducing trials of rights and titles of Inheritance and franktenement in perſonal actions, in which there is no end or limit of ſutes) hath brought with it four main Inconveniences; 1. Infiniteneſs of verdicts, recoveries, and judgements in one and the ſame cauſe: 2. Sometimes contrarieties of verdicts and judgements one againſt another: 3. Continuance of ſutes by 20, 30, and 40 years, to the utter impoveriſhing of the parties: 4. All this tends to the diſhonor of the Common Law, which utterly abhorrs Infiniteneſs and protraction of ſutes: And herein the excellency of the Common Law is to obſerved, viz. That the receding from the true inſtitution thereof, introduceth many Inconveniences, and the obſervation of it is alwayes accompanied with peace and quiet, the end and center of all human laws. See the Epiſtle to the 4. Report, fol. 1. b. Vexatious ſutes.

8 Vide Max. 180. ca. 3. & 186, 25.

183 The Law construeth things with Equity and Moderation.

Convenient time.

1 In 18 E. 4. 22. A man is bound to make an obligation immediately, yet he shall have convenient time to do it. In Butler and Bakers case. Co. l. 3. 27. a 1.

Escape.

2 For as much as Escapes are very penal to Sheriffs, Bailifs of Liberties, and Keepers of Prisons, the Judges have always made such favourable construction, as the Law will permit, in favour of them, being Officers, and Ministers of Justice, and will never adjudge one to make an escape upon any strict construction; for albeit the Sheriff or other officer, that keeps prisoners, ought not to suffer one in execution to goe at large by Bail or Baston, but ought to keep them in salva & arcta custodia, and according to the Statute of Westm. 2. cap. 11. which ordains, quod carceri mancipentur in ferris, to the end they may the sooner pay their Creditors; yet if one be arrested upon a Capias ad satisfac. and the Bailifs upon a habeas Corpus bring him to Westm. and at his request carry him to Lambeth in Surrey, and at the day of return deliver him to the Kings Bench, This shall be adjudged no escape, neither shall the prisoner thereupon have an Audita querela against the Creditors; So it is likewise if the prisoner had of his own accord gone to Lambeth, so as he had returned in time to be delivered into Court at the return of the writ, as it was adjudged in Charnicks case, Sheriff of the County of Bed. in 31 Eliz. So if one be Sheriff of two Counties, hath several prisoners in execution in each County, upon two habeas Corpora against two of them, he may bring the one prisoner out of the one County into the other, and then carry both the prisoners up according to the several writs to him directed, and this shall not be adjudged any escape in the Sheriff: Also, If a prisoner in execution escape and flie into another County, and the Gaoler make fresh suit after him, and taking him puts him into the Gaol again, this shall be adjudged no escape; for that upon fresh suit the Gaoler took him again, and put him in prison before any action brought against him: And in the cases above produced upon habeas Corpus the Sheriff is not strictly bound to keep the direct way to West. in recta linea, so as he have him at the return of the writ, and then deliver him into Court; for if the effect of the writ be pursued, it sufficeth. Co. l. 3. 44. 2. 4. in *Baylons* case.

Copihold Fines.

3 Where fines in a Copyhold Manor are uncertain, the Lord ought not to demand or exact excessive or unreasonable fines, and if he do, the Copyholder may deny to pay it without danger of forfeiture, and it shall be determined by the opinion of the Justices, before whom the matter depends, upon a demurrer, or at the trial, whether the fine demanded were reasonable or no; for if Lords might assess fines excessively at their pleasure, all the estates of Copyholders, which are a great part of the Realm, and have continued time out of mind, would be at the will of the Lords to defeat and destroy, which would be inconvenient; And thus it was adjudged in the Common place in Hoddesdons case. Co. l. 4. 27. b. 3. in *Hubbert & Hamonds* case.

Sewers.

4 Notwithstanding that the words of the Commission of Sewers give authority to the Commissioners to do according to their discretions, yet their proceedings ought to be limited and bounded by the Rule of Law and reason; for discretion is a science of discerning truth from falshood, right from wrong, shadows from substance, and betwixt equity and colourable glosses and pretences, and not to doe Co. l. 5. 100. a. 3. in *Rooks* case.

according to their own wills and private affections.

Co. l. 6. 50. b. 4. in *Bosmels* case. Tail. Usurpation.

5 If tenant in tail suffer an usurpation and die, the issue in tail is remedied by the equity of the first branch of Westm. 2. cap. 5. because after the Statute of Westm. 2. cap. 1. (which created the estate tail, and was made the same Parliament) the issue in tail could not have a writ of right of advowson; and therefore shall be aided by the said first branch, as it is held 42 E. 1. 24, & 25. Vide 26 Ass. pl. 4. 8 E. 2. Quare Impedit 167. 24 H. 6. 28.

Co. l. 8. 40. a. 4. *Grieslyes* case. Amerciaments.

6 Amerciaments, whether they are to be assessed in Inferiour Courts by the suitors, or in Superiour Courts by the Judges, they are all termed Misericordia, because whosoever hath the assessance of them, ought to use great moderation.

Co. l. 11. 44. a. 2. in *Rich. Godfreyes* case Fines. Distress, &c.

7 The Reasonableness of fines in Courts, distresses, amerciaments, and fines at the will of the Lord, shall be adjudged by the Justices, and if they be outragious, and excessive, and (by consequent) injust and against the Law, they have power to moderate them.

F.N.B. 75. a. &c. Amerciament.

8 When an amerciament is excessive or outragious in a Court Baron, or other Court, which is not a Court of Record, for trespass, or any other offence, the Law hath ordained the writ of Moderata Misericordia to be directed to the Lord of the same Court or his Bailiffs, commanding them to take a moderate amerciament according to the quantity of the trespass, &c. and thereupon the party grieved may have an Alias, Pluries, and Attachment if he please. See the Statutes of Magna Carta cap. 14. and Westm. 2. cap. 6.

F.N.B. 103. b. Statute Merchant.

9 If a man be bound in a Statute marchant, and after make feoffment of parcel of his lands to one man, and of another parcel thereof to another, and the recognisee sues execution upon the Statute, and hath execution against the one feoffee; here, this feoffee shall have an Audita querela against the other feoffee, to shew cause why the recognisee hath not execution against his lands, as well as against the lands which he hath, &c.

Pl. Co. 17 a. 4. &c. in *Fogassaes* case. Penal Law.

10 Both the matter and words of penal Laws shall be taken strictly, and not extended by Equity in prejudice of them against whom the penalty is to be inflicted; As the Statute of Westm. 2. cap. 11. ordains, that if Accomptants shall be found in arrear before Auditors, Arrestentur Corpora eorum, et per testimonium Auditorum ejusdem Compoti mittantur et liberentur proximæ Gaolæ Domini Regis in partibus illis, quousque, &c. Here, the Statute is general, that they should be imprisoned by the Auditors, and saith not at what time, so as by the Letter of the Statute, the Auditors may imprison the Accomptants when they please after their accompt; yet in 27 H. 6. 8. Tit. Barr, 44. & Br. Accompt 6. In debt upon arrearages of accompt it is adjudged, that if the Auditors do not commit the Accomptant to prison presently after the accompt, they can never commit him afterwards, because the Statute is penal to him, that is to be imprisoned, &c.

Pl. Co. 67. a. 1. *Dyve* and *Manningh.* Bail.

11 At the Common Law before the Statute of 23 H. 8. 10. the Sheriff had commandment and authority to let to bail such as were mainpernable; for the Common Law (which is Common reason) would alwayes have persons taken by writ, bill, or warrant upon personal actions, or Indictments of trespass, to be enlarged by sureties, for that in a manner it stands indifferent, whether they are guilty or no, and then if they should not be guilty, and not restrained of their liberty, it would be a great inconvenience, which the Law would never suffer.

12 Hob. 14. Sir Dan. Norton against Simmes.

184 Reſtraineth a general Act or Rule, and (ſometimes alſo) a Particular contract, if there be found any miſchief or Inconvenience in them.

ſe no wit-
s for her
band.

Co. Inſt. part 1. 6. b. 4.

1 Regularly, any perſon of competent age and diſcretion, and againſt whom there is no juſt exception by reaſon of perjury, conviction of felony, or the like, may be admitted a witneſs in any cauſe, yet in 10 Jac. in Com. Banc. in a caſe upon the Statute of Bankrupts, it was adjudged, that a wife cannot be produced as a witneſs either againſt or for her husband, for that it might be a cauſe of implacable diſcord and diſſention between the husband and wife, and a mean of great inconvenience.

nder of
rriage.

Co. ibid. 79. & 3.

2 By the Statute of Weſtm. 1. cap. 22. Tender of Marriage to an heir female before the age of fourteen is void, which is to be underſtood, where the Lord may hold the land the two years after the 14, for within that time the Statute appointeth the tender; but where the Lord cannot have the two years, he may tender a marriage to the heir female at any time after the age of 12. and before 14. for ſo he might have done at the Common Law.

ankmarri-
e.

Co. ibid. 97. a.

ankalmoign

Littl. §. 138.

3 An Argument drawn from inconvenience is forcible in Law, and the Law, that is the perfection of Reaſon, cannot ſuffer any thing which is inconvenient; And therefore the Law ſaith, It is better to ſuffer a miſchief (viz. peculiar to one) than an inconvenience, that may prejudice many. Frankmarriage is ſo called, becauſe it ought to be free of all ſervice to the donor, until the fourth degree be paſt, yet the tenant in Frankmarriage ſhall make fealty to the donor, for it were inconvenient that he ſhould hold land, and do no ſervice at all for it; So likewiſe tenant in Frankalmoign, albeit he be free from all temporal ſervice, yet he ſhall ſay divine ſervice for his Lord, for it were inconvenient that he ſhould do no ſervice at all for the land he holds of his Lord.

ll land hol-
n.

Co. ibid. 98. a. 1.

4 If an Abbot holds in Frankalmoign, and he and the Covent under their Common Seal alien the land to a Lay-man; In this caſe the ſecular man ſhall make fealty, albeit the Alienors hold not by fealty nor any terrens ſervice, but only by ſpiritual ſervices, and thoſe uncertain; for in ſuch caſe the Law createth a new Temporal ſervice out of the land to be done by the Alienee (wherewith the Abbot was not formerly charged) for the avoiding of an Inconvenience, viz. that the feoffee ſhould do no manner of ſervice, and (conſequently) that the land ſhould be holden of no man, which would be inconvenient; for that all land is holden of one or other; and mediately or immediately of the King, becauſe they did originally come from the Crown. Vide 148. 35.

rand Ser-
ncy.

Co. Inſt. part 1. 107. a. b.

5 Regularly, tenant by Grand Serjancy muſt perform that ſervice in proper perſon, and ſhall not make a deputy without the Kings licenſe: yet at the Coronation of King R. 2. John Wilſhire a Citizen of London, who held certain lands in Heydon in the County of Eſſex of the King by Grand Serjancy, viz. by holding a Towell when the King ſhould waſh his hands before dinner, the day of his Coronation, &c. upon his petition exhibited to the High Steward of England in his Court was admitted to make a deputy to perform it, becauſe it was inconvenient for him (being a Citizen) to execute ſo high an office himſelf; And therefore he deputed Edmond Earl of Cambridge to perform the ſervice by holding the towell that day to the King. So at the ſame Coronation

Coronation William Furnival, who held the Manor of Farnham in Com. Buck. by Grand Serjancy, viz. to find the King a glove for his right hand, and to support the Kings right hand the day of his Coronation, while he held in his hand the Verge Royal, could not have executed that place in person, but by some honourable deputy, had not the King that day made him a Knight, and by that means made him also capable of performing that office himself. Also Anne the wife of Sir John Hastings Earl of Pembroke, who held the Manor of Ashley in Norfolk of the King by Grand Serjancy, viz. to perform the office of the Paperie at his Coronation, was adjudged to make a deputy, because a woman could not do it in person, and thereupon she deputed Sir Thomas Blunt Knight, who performed the service in her right, &c.

Co. ibid. 117. a. 1. 6 It is a Rule in Law, that what the Villein hath is the Lords upon seisure or claim, yet if the Villein purchase a Common sans number, the Lord shall not have it, for the Lord may surcharge it, which would be a prejudice to the terre-tenant; there is the same law also of a Corodie uncertain granted to a Villein, or such like inheritances, &c. Lord and Villein.

Co. ibid. 128. a. 4. 7 In any suit Outlawry is a good exception in disability of the person, yet in a writ of Error to reverse an Outlawry, Outlawry in that suit, or at any strangers suit, shall not disable the plaintif, because if he in that action should be disabled, if he were Outlawed at several mens suites, he should never reverse any of them, which would be inconvenient; So likewise in an affaint Outlawry in the plaintif cannot be pleaded in disability of the person. Outlawry.

Co. ibid. 130. b. 1. 8 A protection cannot be cast for the demandant or plaintif, because the tenant or defendant cannot sue a re-summons or a re-attachment, but the demandant or plaintif that sued out the summons or attachtachment, &c. must also sue forth the re-summons or re-attachment. Protection.

Co. ibid. 131. a. 1. 9 In a writ of Dower unde nihil habet no protection is allowable, because the demandant hath nothing to live upon; otherwise it is in a writ of right of dower: Likewise in a Quare Impedit, and Assise of Darrein presentment a Protection lyeth not, for the eminent danger of the laps: neither lyeth a protection in an Assise of Novel disseisin, because it is festinum remedium, to restore the disseisee to his freehold, whereof he is wrongfully and without judgement disseised: It lieth not in a Quare non admisit, because it is grounded upon the Quare impedit; nor in a Certificat upon an Assise, for the like reason, et sic de similibus: yet regularly and in most suites Protections are allowable. An Infant was vouched, and at the Pluries venire facias a protection was cast for the Infant, but disallowed, because his age must be adjudged by the Inspection of the Court. Protection.

Co. ibid. 134. a. 1. 10 If an Executor or Administrator sue an action, Outlawry in the plaintif shall not disable him, because the suite is in auter droit, viz. in the right of the testator, and not in his own right: but if an executor or administrator be excommunicate, he may be disabled, albeit he sue in auter droit, because they, who converse with a person excommunicate, are excommunicate also. Excommunication.

Litt. §. 202. Co. ibid. 136. b. 3. 11 The Law giveth power to the Lord to seise his Villein where he finds him, yet if a Villein enter into Religion and be profest, the Lord cannot take him out of his Closset, because then he could not live as a dead person, nor according to his Religion, which were inconvenient. Villein.

Litt. §. 219 Co. ibid. 145. a. 1. 12 Upon the grant of a rent-charge the grantee may make his election, either to recover it by writ of Annuity or by distress, for the law grants Annuity.

grants both to him; yet when he hath once made his election and fixed upon one way, he shall not make use of the other, for then he should recover one thing twice, which would be a double charge to the grantor.

Replevin. 13 The words of the Statute of Marlbridge, cap. 21. for Replevins are, Quod vicecomes post querimoniam inde sibi factam ea sine impedimento vel contradictione ejus, qui dicta averia ceperit, deliberare possit, &c. By which word querimonia it may seem, that by the Statute the plaint ought first to be entred in the County Court, before the Sheriff can grant a Replevin; Howbeit, the Sheriff may take a plaint upon the said Act out of the County Court, and make Replevin presently; for it would be very inconvenient for the Owner to forbear his Cattel till the County day. Co. ibid. 145 b. 3.

Replevin. 14 If a man by his deed grant a rent with clause of distress, and grant further, that he shall keep the goods distrained against gages and pledges, until the rent be paid, yet shall the Sheriff replevy the goods distrained, for it is against the nature of such a distress to be irrepleviable, and by such an Invention the current of Replevins would be overthrown, to the hinderance of the Commonwealth; And therefore in 31 E. 3. Gage deliv. 5. it was disallowed by the whole Court, and awarded, that the defendant should gage deliverance, or go to prison. Co. ibid. 145. b. 3.

Grant of a rent. 15 If there be Lord and tenant by fealty and certain rent, and the Lord by deed grant the rent in fee, saving the fealty, and grant further by the same deed, that the grantee may distrain for the same rent in the tenancy; Here, albeit a distress were incident to the rent in the hands of the Grantor; and although the tenant attorn to the grant, yet cannot the grantee distrain, for the distress remaining as an incident inseparable to the Seigniorie, the tenant should then be subject to two several distresses of two several men, which would be oppressive and inconvenient: So it is likewise if the Lord in that case grant the rent in tail, or for life, saving the fealtie, and further grant, that the grantee shall distrain for it; Here also, albeit the reversion of the rent be a rent service, yet the donee or grantee shall have it but as a rent seck, and shall not distrain for it. Co. ibid. 150. b. 1.

Coperceners. 16 Estovers appendant to freehold, Corodie uncertain, Homage, Fealty, Viscary uncertain, Common sans number, or the like, shall not be divided between Coperceners for that would be a charge to the tenant of the soil. Co. ibid. 164. b. 4.

The Lord Mountjoyes case. 17 The Lord Mountjoye seised of the Manor of Canford in fee, did by deed indented and inrolled bargain and sell the same to Browne in fee, who in the deed covenants, that the Lord Mountjoye and his heirs shall digg ore and turf in the wastes of the said Manor; And in this case three points were resolved, 1. That this did amount to a grant of an Inheritance to the Lord Mountjoye, 2. That notwithstanding this grant, Browne and his heirs might dig also, and like to the case of Common sans number, 3. That the Lord Mountjoye might assign his interest to one, two, or more, but then if it were to two or more, they could make no division of it, but work together with one stock, neither could the Lord Mountjoye, &c. assign his interest in any part of the waste to one or more, for that might work a prejudice and a surcharge to the tenant of the land: And therefore if such an uncertain Inheritance descendeth to two Coperceners, it cannot be divided between them, Causâ quâ supra. Co. ibid.

Tender of debt in court. 18 If an Obligation of 100 l. be made with condition for payment of 50 l. at a day, and at the day the obligor tender the money, and the obligee refuseth the same, yet in an action of debt upon the obligation, Co. ibid. 207. a. 3.

if the defendant plead the tender and refuſal, he muſt alſo plead, that he is yet ready to pay the money, and tender the ſame in Court, becauſe the 50 l. are parcel of the obligation, and not perishable; but if a man be bound in 200 quarters of wheat for the delivery of 100 quarters, if the Obligor tender at the day the 100 quarters, &c. he ſhall not plead uncore priſt, becauſe albeit they are parcel of the obligation, yet they are bona peritura, and it is inconvenient and a charge for the Obligor to keep them.

Entry and Claim.

Littl. §. 419. Co. ibid. 253. b. 19 Before a man can bring his action for the recovery of lands, whereunto he hath title or right, the Law requires, that he firſt make his entry, and claim his right or title upon the land, which entry gives him poſſeſſion and ſeiſin of the ſame; and where he may enter, a bare claim from off the land will not ſerve to give him ſeiſin thereof; yet if by reaſon of menacing words, lying in wait in the way with weapons, or the like, he dare not enter upon the land; in ſuch caſe, the Law gives him this liberty, that if he claim his right, as near the Land as he dare go for fear of ſuch bodily hurt, as may cadere in virum conſtantem, that claim ſhall give him ſeiſin, as well as if he had entred upon the land; And if the party be ſick, decrepit, or recluſe, he may do it by his ſervant, &c.

Deſcent i fuller Eaſe.

Littl. §. 440. Co. ibid. 261. 20 The Rule of Law is, that where a diſſeiſor dies ſeiſed, it takes away the entry of him that right hath; yet if the diſſeiſee at the time of the diſſeiſin and deſcent were not in England or the dominions thereunto belonging, ſuch deſcent ſhal not take away his entry, becauſe being beyond ſea (by intendment) he could not have notice of the diſſeiſin, and yet without any ſolly or laches in him he ſhould loſe his right, which were inconvenient, and unjuſt.

Action of Slander.

Co. ibid. 282. b. 3. 21 In an action upon the caſe the plaintif declared for the ſpeaking of ſlanderous words, which is tranſitory, and layd the words to be ſpoken in London, the defendant pleaded a Concord for ſpeaking of words in all the Counties of England, ſaving in London, and traverſed the ſpeaking of the words in London: The plaintif in his replication denied the Concord, whereupon the defendant demurred, and judgement was given for the plaintif: for the Court ſaid, that if the Concord in that caſe ſhould not be traverſed, it would follow, that by a new and ſubtil invention of pleading, an antient principle in Law (viz. that for tranſitory cauſes of action the plaintif may allege the ſame in what place or County he will) ſhould be ſubverted, which ought not to be ſuffered; and therefore the Judges of both Courts allowed a traverſe upon a traverſe in that caſe: And the wiſdom of the Judges and Sages of the Law hath always ſuppreſſed new and ſubtil inventions, in derogation of the Common Law. Vide infra 193. 1.

Attornment.

Co. Inſt. part 1. 315. a. 4. 22 Regularly, in all actions an Infant ſhall have his age, and yet if an Infant have lands by purchaſe or deſcent, he ſhall be compelled to attorn in a per quæ ſervitia, and no miſchief to the Infant at all; for when he comes to full age (notwithſtanding ſuch attornment) he may diſclaim to hold of him, or may ſay, that he holds by leſſer ſervices; but a great miſchief would fall upon the Lord, if the Infant ſhould not attorn, or his attornment ſhould not be good, for then the Lord ſhould loſe his ſervices in the mean time: So likewiſe an Infant is compellable to attorn in a Quid juris clamat, in caſe where he is leſſee. Vide Cannys caſe, Co. l. 9. 85. b. 2.

Waſte.

Co. ibid. 54. a. 1. 23 A Guardian ſhall not be puniſhed for waſte done by a ſtranger, it is ſo penal to him, becauſe for waſte he ſhall loſe the wardſhip both of the body and of the Land, albeit the waſte be but to the value of 20 s. and if that ſatisfieth not to ſatisfie for the waſte, then ſhall he anſwer

ſwer damages of the waſte, over and above the loſs of the ward: It is otherwiſe in caſe of Tenant by the Curteſie, tenant in Dower, tenant for life, years, &c. for they ſhall anſwer for waſte done by a ſtranger, and then ſhall take their remedy over.

tinue for ings.

24 Regularly, the writings that concern land belong to the owner of the land, and are to be kept by him, yet if I am infeoffed to me and my heirs, and I enfeoff another to him and his heirs with warranty, my heir ſhall have a Detinue for the deed, by which I was infeoffed, and ſhall Count ſpecially, viz. upon the ſpecial matter, in reſpect of the ſpecial loſs and prejudice, which he may have for want of the deed, in caſe he ſhould be vouched upon the warranty, which I made to my feoffee. Vide 10 E. 4. 9. b. Co. l. 1, 2, 3, in the Lord *Buckhurſts* caſe.

nt extinct.

25 Tenant in tail, remainder in tail, he in remainder grants a rent charge out of the land, and then Tenant in tail in poſſeſſion ſuffers a recovery; In this caſe, the rent is extinct and gone; for it were inconvenient that the land ſhould be ſubject to the charges both of the tenant in poſſeſſion, and of him in remainder alſo, as to be charged with the ſtatutes or recogniſances of tenant in tail, and alſo of him in remainder ſimul ex ſemel, whereas tenant in tail in poſſeſſion having power to dock both his own eſtate, and the eſtate of him in remainder, by poſſibility it might never come in poſſeſſion to him in remainder. Co. l. 1. 62. b. *Caples* caſe.

udulent onveyances.

26 Where a man conveyes his land to the uſe of himſelf for life, and after to the uſe of divers others of his blood, with future power of revocation, as after ſuch a feaſt, or after the death of ſuch a man, and afterwards, and before the power of revocation commenced, he for a valuable conſideration bargains and ſells the land to another and his heirs, this bargain and ſale is within the remedy of the Statute of 27 Eliz. cap. 4. for albeit the Statute ſaith, The ſaid firſt conveyance not by him revoked, according to the power by him reſerved, which ſeems by the literal ſence to be meant of a preſent power of revocation, for no revocation can be made of a future power, until it come in eſſe, yet it was held, that the intent of the Act was, that ſuch voluntary conveyance, which was originally ſubject to the power of revocation, be it in præſenti, or in futuro, ſhall not ſtand againſt the purchaſor bona fide for valuable conſideration, & if any other conſtruction ſhould be made, the ſaid Act would ſerve for little or no purpoſe; for then it would be no hard matter to evade it: So likewiſe if A. reſerve a power of revocation by the aſſent of B. and after A. bargains and ſells the land to another, this bargain and ſale is good, and within the remedy of the ſaid Act; for otherwiſe the good proviſion of the Act by a ſmall addition and knaviſh invention might be defeated. Co. l. 3. 82. b. 2. *Standen* & *Bullocks* caſe, in *Twines* caſe, per *Warmſley* Juſt. from Sir *Ch. Wray* Ch. Juſt. *per tot. cur.*

he like.

27 In 38 Eliz. in C. B. betwixt Lee and his wife executrix of one Smith plaintif, and Mary Colſhil executrix of Th. Colſhil defendant, in debt upon an obligation of 1000 marks, Rot. 1707. The caſe was this, Colſhil the teſtator had the office of a Cuſtomer by Letters patents to him and his deputies, and by indenture betwixt him and Smith the teſtator of the plaintif, and for 600 l. paid, and 100 l. per annum to be payd during the life of Colſhil, makes deputation of the ſaid office to Smith, and Colſhil covenants with Smith, that if Colſhil dye before him, that then his executors ſhould repay unto him 300 l. and divers covenants were in the ſaid Indenture concerning the ſaid office and enjoyment thereof, and Colſhil was bound to Smith in the ſaid obligation to perform covenants, and the breach was alleged for the non-payment of the ſaid 300 l. for that Smith ſurvived Colſhil. And albeit the ſaid covenant to repay the 300 l. was lawfull, yet in as much as the reſidue of the covenants were againſt the Statute of 5 Ed. 6. Co. l. 3. 82. b. 4. *Colſhils* caſe, reported in *Twines* caſe.

cap.

cap. 16. the obligation was adjudged voyd, becauſe if the addition of a lawfull covenant ſhould make the bond of force as to that, the Statute would ſerve for little or no purpoſe. Vide plus ibid.

Co. l. 4. 122. b. 4. in *Buſtards* caſe. 28 The Rule of Law is, that exchanges ought to be of equal eſtates, and yet if A. hath a reverſion in fee of an acre of land expectant upon an eſtate for life, and makes an exchange with B. by deed indented, and gives this acre by name of an acre of land, (and not by the name of the reverſion) in exchange for another acre; In this caſe albeit B. expect to have the acre, ſo given to him, in poſſeſsion, yet (in as much as nothing paſſes by the grant of the acre of land but the reverſion) the warranty or condition in Law annexed to the exchange, cannot by the Law extend to more than paſſed by force of the exchange, for they are incident and annexed to the eſtate which is given, and cannot extend to the franktenement which was in the leſſee; becauſe if the Law ſhould be otherwiſe, great miſchief would enſue: for if an exchange be made of divers Manors, and peradventure divers parcels of them are in leaſe for life; In this caſe if the exchange ſhould be voyd, becauſe it was not made as of a Manor in poſſeſsion, that would avoid all ſuch exchanges, which would be miſchievous, and there can be no miſchief on the other part; for when the tenants for life are in poſſeſsion of the Land, it will be imputed the laches and folly of the purchaſor, that he did not diſcover it by Survey or ſome other enquiry. Exchange.

Co. l. 5. 90. a. 2. in *Hoes* caſe. 29 Regularly, all writs directed to the Sheriff ought to be returned, for ſo the Sheriff is by them commanded to do, & if a Capias in proceſs be not returned, the arreſt is tortious; ſo likewiſe an Elegit, becauſe the extent is to be done by an Inqueſt, and not by the Sheriff alone, if it be not returned, it is not valid: nevertheleſs, in all writs of execution, when the Sheriff alone doth it, as Capias ad ſatisfaciendum, habere facias poſſeſſionem, or ſeiſinam, fieri facias, Liberate, &c. if the execution be duly made, it is valid, albeit the writ be not returned; for if the non-return of the writ by the Sheriff ſhould cauſe new execution to be had againſt the defendant, and ſhould leave him to his action againſt the Sheriff, that would tend much to the prejudice of the defendant, whoſe goods are already ſold by the writ and proceſs of Law for the ſatisfaction of his debt: Again, if the ſale of the goods by force of the writ ſhould by the non-return of the writ be tortious, then the Sheriff will never find buyers, to whom he may ſell any defendants goods by force of any writ of execution, which would be inconvenient, and great delay of executions, which are the fruit and life of every ſute. Execution.

Co. l. 7. 24. a. 3. *Buts* caſe. 30 If a rent be granted out of the Manor of Dale, and the grantor grant over, that if the rent be behind, the grantee ſhall diſtrain for the ſame in the Manor of Sale, this is no grant of the rent, but only a penalty in the Manor of Sale; for if the grantee ſhould bring a writ of Annuity, that would only extend to the Manor of D. for upon the grant of the diſtreſs in the Manor of Sale, no writ of Annuity lyeth, becauſe the Manor of S. is only charged, and not the perſon of the grantor, as to that; And therefore the bringing of the writ of Annuity cannot diſcharge the Manor of S. of any rent; And ſo the Law, by conſtruction againſt the words and intention of the parties, ſhall doe an injury to the grantor to charge him twice, which were inconvenient. Rent charge.

Co. l. 9. 85. a. 4. in *Cunnys* caſe. 31 In a writ of Meſne the Paroll ſhall not demurr for the nonage of the plaintif, becauſe it is not reaſon, that the Infant ſhould be diſtrained for the ſervices of the Meſne during his nonage, and yet he to have no remedy until his full age; but in regard his nonage ſhall not privilege him from the payment of the rent during his nonage, the Law will alſo give him remedy during that time. Parol demur. nonage.

32 Theſe

Writ of Error

32 These two Rules in Law are regularly true, 1. That a writ of Error lyeth not upon an award, until the principal judgement be given; 2. That it lyeth not until the whole matter in the original be determined; yet each of these have exceptions: For as to the first, in Trin. 18 H. 7. in B. R. Rot. 3. E. was indicted for the death of M. before Justices of Peace in the County of Lincoln, whereupon a Capias was awarded; and thereupon also an Exigent, after which E. dies before any Attainder, upon which award of the Exigent his executors bring a writ of Error, and it was adjudged, that the writ of Error did well lie, because by the award of the Exigent his goods and chattels were forfeit, and of such awards, which tend ad grave damnum of the party, a writ of Error lyeth, & sic de similibus. As to the second, you shall find in 36 H. 6. Fieri fac. 3. That in debt against divers by several præcipes, if there be error in the Judgements against one of them, he shall have a writ of Error; for in Originals, wherein there are several Counts, and Error is against one, he shall have a writ of Error, and the record of his Count, and the pleading, &c. shall be severed from the original and removed into the Kings Bench, and yet the Original shall still remain in the Common Place; for it would be inconvenient and prejudicial (in that case) to stay until judgement be given upon the whole original: Howbeit, where there is one original and one Count, he cannot have a writ of Error untill all be determined, for the record cannot be in the Kings Bench and the Com. Pl. all at one time. Co. l. 11. 41. a. 1. in *Metcalfs* case.

Collusion.

33 It is provided by the Statute of Marlebridge cap. 6. that the Lord by Knight service shall not lose his custody by feoffment made by Collusion, verumtamen non licet eis hujusmodi feoffatos sine Judicio disseisire, sed brevia habeant de hujusmodi custodia sibi reddenda, yet if the tenant enfeoff the Villein of the Lord upon collusion, the Lord may enter and expell him, and shall not be put to his action, as it is held in 33 H. 6. 16. for the general words of the Act shall not enable the Villein, who is disabled against his Lord by the Common Law, and if the Lord should bring an action against him according to the letter of the Act, he shall be thereby enfranchised, which would be a prejudice to the Lord, and was never intended by the Makers of that Act. Co. l. 11. 77. b. 3. in *Magdalen Colleges* case.

Intent of the Law performed, no breach.

34 In every Law there are some things, which when they happen, a man may break the words of the Law, and yet not break the Law it self, and such things are exempt out of the penalty of the Law, albeit they are done against the letter of the Law; for the breaking of the words of the Law is not the breaking of the Law, so as the intent of the Law is not broken, and when the words of the Law are broken for the avoiding of greater inconveniences. For example, it is against the Law for any man to assault, bind, or beat another, yet in the 22. Book of Assises, pl. 56. If a man be mad and out of his wits, whereby he doth or is likely to do great hurt, other men may assault, bind, and beat him too, and justifie it by Law, to prevent the hurt and mischief which he may do in that condition. So the Statute of Marlebridge cap. 4. prohibits generally, that none shall convey a distress out of one County into another, yet it is adjudged in 1 H. 6. Tit. Distress 1. that if one hold land of a Manor in another County, the Lord may distrain and bring the distress from the land holden of the Manor, into the County where the Manor is, and this is for the avoiding of a mischief & inconvenience; for it would be great damage to the Lord if he might not bring the distress to his Manor, for the avoidance whereof the Law is not offended, albeit the letter of the Law is not observed: In like manner, there was a Law amongst the Romans, that whoso- Pl. Co 18. a. 4. in *Fogassaes* case, & 19 b. 1.

ever scaled the walls in the night should be condemned to die, yet in the time of warr one scaled the walls in the night to discover the approach of the Enemy, and he was by the Senate not only discharged of death, but besides was well rewarded for that his service to the Commonwealth; for although he thereby infringed the words of the Law, yet the grave Senators expounded it to be no breach of the intent of the Law; because that Law was made to prevent hurt and danger, and not to inhibit benefit and safety to the City: So likewise in Fogassaes case, the incertainty of the word being caused for the avoiding of a great inconvenience, (viz. the loss of many mens lives) shall excuse the incertainty of the agreement with the Collector.

Pl. Co. 100 b. in matters of the Crown. 35 In an appeal of murder against five, if one Venire facias issue out to summon the Jury, they ought to be tried all together, but if they in subtilty make several Challenges, so as there cannot be left a full Jury, the Clerk may sever the panel; for otherwise upon sleight and subtilty they might evade the tryal. Trial.

Co. l. 4. 22. b. in the cases of Copyholds. 36 Albeit the estate and interest of a Copyholder (upon descent) resteth in him by force of the Custom of the Manor, yet in pleading the Law doth allow him to allege (before admittance) his ancestors admittance, & (after admittance) his own, as a grant, and this is so permitted him by the Law to avoid an inconvenience, which otherwise would necessarily follow; for if the Copyholder in pleading should be compelled to shew the first grant, he would be at a loss in doing that, because if the grant were before time of memory, then is it not pleadable, or if it were within time of memory, then would the custom fail; for which cause the Law hath allowed the Copyholder in pleading to allege any admittance, as a grant, either upon a descent, or a surrender rather than to force him to plead that which may tend to his prejudice, although in rei veritate he is in by the Custom, and not by any grant. Copyhold.

Dyer 218. 3. 5 Eliz. *Fortescue* against *Strode*. 37 The condition of an obligation was, that the obligor upon request should do all acts, which by the Council of the obligee should seem reasonable for the releasing of an obligation, in which the obligee stood bound to the obligor; hereupon request was made to seal a release of all demands to the obligee and one M. and averment, that there was no other matter betwixt them but makes no mention of M. And this request was adjudged unreasonable, albeit there were no matter betwixt the obligee and M. Unreasonable condition.

Dyer 262. 31. 9 Eliz. 38 Regularly, all the personal estate of a Felo de se is forfeited to the King, yet if such a felon has due unto him a debt upon a simple contract without specialty, it shall not be forfeited to the King, because then the party should be rebutted from waging his Law, which he might do against a common person. *Felo de se.*

39 Vide Hob. 3 Pincombe against Rudge: A warranty may be sued by way of Covenant 133. Allen, and Walker, for summons in Dower.

Hob. 91. Sir *Tho. Puckerings* case. 40 If an office be found only in one County of all the lands lying as well in other Counties as there, which in Law is no office, but only for the proper County, yet this by the Court of Wards was allowed, as an office to all, to ground a charge and process upon; for that it was beneficial to the Subject, who else by divers offices would have been put to an intollerable charge, &c. Offices.

185 *Nemo bis punitur pro eodem delicto.*

Appeal, Indictment.

1 Wetherol brings an appeal of murder against Darley, the defendant pleads not guilty, and he was found guilty of Homicide, and had his Clergy; And afterwards he was indicted of murder, and thereupon arraigned at the Queens suit, and he pleads the former conviction in the appeal at the suit of the party; And it was adjudged a good barr, and thereupon he was discharged; for it was a good barr at the Common Law, and not restrained by any Statute; And the reason thereof is, because the life of a man shall not be twice put in jeopardy for one and the same offence. Co. l. 4. 40. a. 3. *Darleys* case.

Barr in mayhem.

2 Hudson brings an appeal of Mayhem against Lee, the defendant pleads, that the plaintif had before brought an action of trespass in the Common Bench against him of assault, battery, and wounding, and thereupon had recovered against him 200 Marks damages, and 10 s. costs, which were satisfied before the appeal brought; and farther averred, that the battery and wounding in the trespass, & the mayhem in the appeal were all one, and not divers; whereupon the plaintif demurrs: And it was resolved per totam Curiam, that the barr was good; for albeit it was alleged, that an appeal of mayhem, being an action of an higher nature than an action of trespass, could not be barred by it, yet because in the appeal the plaintif was but to recover damages, as he had done before in the action of trespass, he shall not be twice satisfied, nor the defendant twice punished for one and the same thing. Vide 41 Ass. pl. 16. & 2 R. 3. 14. Co. l. 4. 43. a. *Lees* case.

Action sur case Barr in debt.

3 Recovery or Barr in an action upon the case sur assumpsit is a good barr in an action of debt brought upon the same contract, And vice versâ Recovery or barr in an action of debt is a good barr in an action upon the case sur assumpsit; because in such an action upon the case he shall not only recover damages for the special loss which he hath, if any be, but likewise for the whole debt, and reason will not permit, that the defendant should satisfie one debt or duty twice. Vide 12 E. 2. 13. a. 2 R 3. 14. 38 H. 8. Br. Action sur le case 105. Bis idem exigi bona fides non patitur; & in satisfactionibus non permittitur amplius fieri, quod semel factum est. Co. l. 4. 94. b. *Slades* case.

Covenant.

4 A. covenants with two, and cum quolibet eorum; in this case they cannot sue severally, unless their Interests be several, for their Interests and the Covenant must accord: otherwise the covenantor may be twice charged for one and the same thing; and therefore these words cum quolibet eorum are (in such case) but words of amplification and abundance, and cannot sever the joynt sense of action: In like manner one cannot be bound to many jointly and severally, for albeit authority may be so given (as to two, vel cuilibet eorum, to give liberty, &c.) yet interest cannot, causâ qua suprâ. Co. l. 5. 19. a. 3. *Slingsbies* case

Trover.

5 In an action of Trover and Conversion brought in the Exchequer by bill, the defendant pleads, that the plaintif had an action of Trover, &c. for the same goods then depending in the K. B. and demands Judgement of the Bill, whereunto the plaintif demurrs; and it was resolved by the Barons, that the Bill should abate; and one of the reasons thereof was this, that the defendant should not be twice vexed for one and the same thing; Nemo debet bis vexari, si constat Curiæ, quod sit pro una et eadem causa. Co. l. 5. 61. a. 3. *Sparries* case.

Nusance.

6 A man shall not have an action upon the case for a nusance done in the high way, for it is a common nusance, and therefore it is not reason, that one particular person should bring the action; for by the same Co. l. 5. 73. a. 4. in *Williams* case.

ſame reaſon, that one perſon may have an action for it, by the like reaſon every one may likewiſe have an action for it, and ſo by that means the party may be puniſhed 100. times for one and the ſame cauſe, which were both unjuſt and unreaſonable.

Co. l. 8. 61. a. 4 in *Beeches* caſe. 7 In all cauſes real or perſonal, when there is but one demandant or plaintif, and divers tenants or defendants, the demandant or plaintif may be divers times amerced, but where there is but one tenant or defendant, he ſhall not be twice amerced. Amercia.

Co. l. 11. 43. b. 4. in *Ri. Godfreyes* caſe 8 If a man be convicted in the County Court before the Sheriff in a Writ of Recaption, he ſhall be only amerced, becauſe it is not a Court of Record; but if he be convicted in a Writ of Recaption before the Juſtices, viz. in a Court of Record, he ſhall be fined and impriſoned, but then he ſhall not be amerced, for that were to puniſh him twice for one and the ſame offence. Amercia.

Co. l. 11. 51. b. 1. in *Liſords* caſe. 9 If my diſſeiſor be diſſeiſed, and after I re-enter, I cannot have an action of treſpaſs againſt the ſecond diſſeiſor; becauſe then he would be doubly charged for one and the ſame offence, viz. by me, and the firſt diſſeiſor, And therefore by a fiction in Law) I ſhall recover all the meſne profits againſt the firſt diſſeiſor, his ſervants, and others, who have committed treſpaſſe by his Command, and in his right. Diſſeiſa.

F. N.B. 39. d. 10 If a man hath a Quare Impedit againſt one, and the defendant hath alſo an Aſſiſe of Darrein preſentment, againſt the plaintif, and recovers in the Darrein preſentment, and the plaintif is non-ſuite in the Quare Impedit; In this caſe, the defendant ſhall have two judgements againſt the plaintif, viz. to have a writ to the Biſhop in both Actions, and two writs ſhall be awarded to enquire of damages, Howbeit he ſhall not pay damages twice for one and the ſame diſturbance. Damage.

F. N. B. 43. g. 11 Where one is ſued in the Common Bench and in the Court Chriſtian for the ſame thing, a prohibition lyeth. Prohibitio.

12 Vide Hob. 2. Incerti temporis & nominis. A debt ſhall not be twice ſatisfied. Debt.

Hob. 128. Pie & Coke. 13 Two Informations exhibited the ſame day againſt the ſame man for the ſame offence, ſhall be both quaſhed. Informatio.

186 It flyeth and preventeth all occaſions of Evill.

Co. Inſt. pars 1. 88. b. 1. Littl. §. 123. 1 The heir of lands in Soccage under the age of 14. ſhall not be committed to the cuſtody of any perſon, unto whom the Inheritance by any poſſibility may or can deſcend, leſt by undirect practice he may gain the Inheritance to himſelf; And therefore if a man hath iſſue two ſons by ſeveral venters, and having lands holden in ſoccage of the nature of Borough Engliſh, dyeth, the younger brother within the age of 14 years, the elder brother of the half bloud ſhall not have the cuſtody of the land, becauſe by poſſibility the elder brother may inherit the land; for if the youngeſt die without iſſue, and the land deſcend to the uncle, the elder brother of the half bloud may be heir unto him; And therefore the Rule in Lib. Rubr. cap. 70. is, Nullus hæredipetæ ſuo propinquo vel extraneo periculoſa ſanè cuſtodia committatur; And herewith alſo agree our antient Authors, as Bracton l. 2. fol 87 Brit. fol. 163. Fleta l. 1. cap. 10. Forteſc. cap. 40. Howbeit it is otherwiſe in the Civil Law, Vide Fort. ibidem. Heir in ſoccage.

Co. ibid. 100. a. 3. 2 To prevent ſuites and troubles, there are ſix writs in Law that may be maintained, Quia timet, before any moleſtation, diſtreſs, or implead- Writs of Prevention.

impleading: As 1. A writ of Meſne, before he be diſtrained; 2. A Warrantia cartæ, before he be impleaded; 3. A Monſtraverunt, before any diſtreſs or vexation; 4. An Audita querela, before any execution ſued; 5. A Curia Claudenda, before any default of incloſure; 6. A Ne injuſte vexes, before any diſtreſs or moleſtation: And theſe are called brevia anticipantia, writs of Prevention.

To prevent falſe verdicts. 3 To prevent falſe verdicts, if the Jury after their evidence given unto them at Barr do at their own charges eat or drink either before or after they be agréed on their verdict, it is finable, but it ſhall not avoid the verdict; Howbeit, if before they be agréed on their verdict they eat or drink at the charge of the plaintif, if the verdict be given for him, it ſhall avoid the verdict; but if it be given for the defendant, it ſhall not avoid it, Et ſic e converſo: Howbeit, if after they are agréed on the verdict, they eat and drink at the charge of him, for whom they do paſs, it ſhall not avoid the verdict. Co. ibid. 228 a. 1.

The like. 4 If the plaintif after evidence given, and the Jury departed from the barr, or any for him, do deliver any letter from the plaintif to any of the Jury concerning the matter in iſſue, or any evidence, or any eſcrowl touching the matter in iſſue, which was not given in evidence, it ſhall avoid the verdict, if it be found for the plaintif, but not if it be found for the defendant, & ſic e converſo: But if the Jury carry away any writing unſealed, which was given in evidence in open Court, this ſhall not avoid the verdict, albeit they ſhould not have carried it with them. Co. ibid. a. 1

The like. 5 By the Law of England a Jury after their evidence given upon the iſſue, ought to be kept together in ſome convenient place, without meat or drink, fire or candle, (which ſome Books call an Impriſonment) and without Speech with any unleſs it be the Bailiff, and with him only if they be agréed: After they be agréed, they may in cauſes betwéen party and party give a verdict, and if the Court be riſen give a priby verdict before any of the Judges of the Court, and then they may eat and drink, and the next morning in open Court, they may either affirm or alter their priby verdict, and that which is given in Court ſhall ſtand: But in criminal cauſes of life and member, the Jury can give no priby verdict, but they muſt give it openly in Court. Co. ibid.

Law-wager. 6 In no caſe where a contempt, treſpaſs, deceit or injury is ſuppoſed in the defendant, he ſhall wage his Law, becauſe the Law will not truſt him with an Oath to diſcharge himſelf in thoſe caſes: Only in ſome other caſes, as debt, detinue, and accompt, the defendant is allowed by Law to wage his Law, becauſe they are not criminal. Co. ibid. 295. a. 2.

The reaſon of diſcontinuance. 7 The reaſon why alienations in fée, in tail, or for life, by tenant in tail, Abbot, Biſhop, husband of his wives land, and the like, doe make a diſcontinuance, and put the iſſue in tail, him in the reverſion or remainder, ſucceſſor, or wife, that right had, to their action, and took away their entry, was for that he was priby in eſtate, and for the benefit of the purchaſor, and for the ſafeguard of his warranty, ſo as every mans right might be preſerved, viz. to the demandant for his antient right, and to the feoffee for the benefit of his warranty, which was founded upon great reaſon and equity, becauſe the benefit of the warranty would be prevented and avoided, if the entry of him, that right had, were lawfull, and thereby alſo the danger, that many times happeneth by taking of poſſeſſions, was warily prevented by Law. Co. ibid. 327 a. 2.

Stat. of Glouc. Warranty. Aſſets. 8 By the expreſs purview of the Statute of Glocester, cap. 3. (where the baron alténs his wives Inheritance with warranty) if aſſets do after deſcend from the father, then the tenant ſhall have recovery Co. ibid. 366. a. 2.

very and reſtitution of the lands of the mother; But in a Formedon (for lands intailed) if at the time of the warranty pleaded no aſſets be deſcended, ſo as the demandant recovereth the land, if afterwards aſſets deſcend, there the tenant ſhall have a Seire facias for the aſſets, and not for the land intailed; And the reaſon hereof is, for that if (in this caſe) the tenant ſhould be reſtored to the land intailed, then if the iſſue in tail ſhould alien the aſſets, his iſſue in a Formedon would again recover from the tenant the land intailed: And therefore the Sages of the Law to prevent future occaſions of ſuits, have heretofore reſolved the ſaid diverſity in the caſes abovеſaid, upon conſideration and conſtruction of the Statute of Gloceſter, and of the Statute de donis, Weſt. 2. cap. 1. Vide ſupra 15, 9. 157, 14. & 178. 22.

Co. Inſt. part 1. 392. a. 4.

9 The puniſhment which the Law inflicts upon a felon is very ſevere, for he is not only puniſhed in his own perſon, but likewiſe in his relations; The judgement againſt his perſon is, that he ſhall be hanged by the neck until he be dead: he is puniſhed alſo implicative in his relations; as 1. In his wife, for ſhe ſhall loſe her Dower; 2. In his children, for they ſhall become baſe and ignoble; 3 In his Poſterity, for his blood is ſtained and corrupted, ſo that they ſhall not inherit either to him or any other Anceſtor; 4. In his real eſtate, for he ſhall forfeit all the lands that he hath in feeſimple, feetail, or for life; 5. In his perſonal eſtate, for he ſhall forfeit all his goods and chattels both real and perſonal: Thus heavy was his puniſhment at the Common Law, And the reaſon thereof was, to the end men ſhould fear to commit felony, ut pœna ad paucos, metus ad omnes perveniat: And it is truly ſaid, Etſi meliores ſunt quos ducit amor, tamen plures ſunt quos corrigit timor: And ſo it is a fortiori in caſe of High Treaſon. Howbeit, after the Statute de donis 13 E. 1. cap. 1. Intailed lands could not be forfeited for felony or treaſon, but only during the life of tenant in tail; but ſince by the Statute of 26 H. 8. cap. 13. Intailed lands ſhall be alſo forfeited for Treaſon: Alſo by the Statute of 1 E. 6. c. 12. the wife was to be endowed, albeit her husband were attainted, convicted, or outlawed for treaſon or felony; but afterwards by the Statue of 5, & 6 E. 6. cap. 11. The wife ſhall loſe her dower, where the husband is attainted of Treaſon, ſo long as the attainder continues in force: There are alſo divers offences made felony by ſpecial Statutes, wherein dower, corruption of blood, and diſherſion of the heir are by ſpecial proviſion ſaved. Puniſhment of Treaſon and Felony.

Co. ibid. 171. b. 3.

10 The Law hath provided for the ſafety of a mans, or a womans eſtate, that before their age of twenty one yeares they cannot bind themſelves by any deed, or alien any lands, goods, or chattels. Infants age.

Co. l. 2. 44. a. 4. in the Biſhop of Wincheſters caſe.

11 A meer Layman, which was not capable of tithes in perancie, was yet capable of diſcharge of tithes at the Common Law in his own land, as well as an Eccleſiaſtical perſon, for by the Common Law the Parſon, Patron and Ordinary might have diſcharged a pariſhioner of tithes in his own land, or the pariſhioner might have given part of his lands to the Parſon for the diſcharge of tithes in the reſidue, as appears in 8 E. 4. 14. and in the Reg. fol. 38. Howbeit, this was alwayes by grant or compoſition, but he could never be diſcharged of tithes by preſcription; for albeit ſuch preſcription might have lawful commencement, yet the Law in favour of holy Church would never ſuffer ſuch preſcription to be put to the trial of lay-men, leſt they ſhould rather ſtrain their conſciences for their private benefit, than render the Church the Duties due unto it. Vide ſupra 2, 5. Preſcription for tithes.

12 The

eofment per it not deve- ed by parol.

12 The Law to prevent ſutes and troubles, will not permit, that a franktenement ſhall be lightly deveſted by bare words in pais, to the end the tenant to the præcipe may be the more certainly known; & therfore if there be Lord and tenant, and the tenant by deed enfeoffs the Lord and a Stranger, and make livery to the Stranger in the name of both; In this caſe, if the Lord by perol diſagree to the eſtate, this is not valid to deveſt it, or if he enter into the land, and diſtrain for the ſervices of his Seigniory, this ſhall amount to a diſagreement of the feoffment, and ſhall not deveſt the franktenement out of him, but if he enter into the land generally and take the profits, this act ſhall amount to an agreement to the feoffment, as it is adjudged per tot. Cur. in 10 E. 4. 12. For then it is not left uncertain, who are tenants to the præcipe, &c. Co. l. 3. 26 b. 2. in *Butler* and *Bakers* caſe.

ttornment.

13 If a reverſion of two tenants for life, or the rent or ſeigniorie of two Jointenants be granted by fine; here, in a Quid juris clamat, Quem redditum reddit, or Per quæ ſervitia againſt ſuch Jointenants, the Law will not permit the one to attorn without his Companion, becauſe the one making attornment without the other may prejudice his companion, as in not claiming to be diſpunishable of waſte, a Condition to have fee, a future term, or the like; for upon a general attornment in Court of Record, the leſſee ſhall loſe all advantages, which are not ſo claimed of Record. Co. l. 2. 67. a. 4. in *Tookers* caſe.

Priſoners. heriff.

14 The Law hath ſo great a regard and care of executions, which are the fruit and life of every ſute, that notwithſtanding they be matters of Record, and the Letters Patents granted to the new Sheriff, and the writ of diſcharge, and writ of delivery to the old Sheriff, yet until the priſoners are delivered unto the new Sheriff, they ſtill remain in the cuſtody of the former Sheriff; and all this to prevent a new ſute and trouble for the recovery of that, which is already determined by Law. Co. l. 3. 72. a. 2. in *weſtbies* caſe.

Slander.

15 If one exhibit articles to Juſtices of Peace againſt another, containing great abuſes and miſdemeanors, not only touching the petitioner, but many others alſo, and all this to procure him to be bound to the good behaviour; In this caſe, the party accuſed for any matter contained in ſuch articles ſhall not have an action upon the caſe, becauſe therein the party complainant purſues the ordinary courſe of Juſtice, and the Law will not permit actions in ſuch caſes, leſt ſuch as have good cauſe of complaint ſhould be deterred from doing it, for fear of ſutes and infinite vexation. Co. l. 4. 14. b. 1. in *Cutler* & *Dixons* caſe.

Common.

16 In caſe of Common by reaſon of vicinage, the one may incloſe againſt the other; for he that hath ſuch a Common cannot put his cattel into the land of the other; but the Cattel ought to be put into the land where they have Common, and then if the Cattel ſtray into the other land, they are excuſed of treſpaſs, by reaſon of the antient uſage, which the Law permits, to prevent ſutes, which might ariſe, if actions ſhould be brought for every ſuch treſpaſs, when there is no ſeparation or incloſure betwixt their Commons. Vide Co. l. 7. 5. b. Sir Miles Corbets caſe. Co. l. 4. 38. b. 1. in *Tirringhams* caſe.

Execution of proceſs.

17 In all caſes, when the proceſſe concerns the King, the Sheriff or other officer, (upon refuſal after demand, to open the door) may break open the door of the houſe, or uſe other means to get in to doe execution; But in caſe of a common perſon the Law doth not permit the Sheriff, &c. (upon requeſt made, and denyal, as aforeſaid) to break into the houſe of the defendant to execute any proceſſe at the ſute of any Subject, for the great inconvenience that might enſue thereupon; becauſe if men as well in the night as in the day ſhould have their houſes (which indeed are their Caſtles) broken open, upon pre- Co. l. 5. 92. b. 3. in *Semayns* caſe.

tence

tence thereof great miſchief and damage might fall out, for by colour thereof upon any feigned ſute the houſe of any man at any time might be broken open, when the defendant might be arreſted elſewhere, and ſo men ſhould not be in ſafety and repoſe in their own houſes: And albeit the Sheriff be an officer of great authority and confidence, yet it appears by experience, that the Kings writs are many times executed and ſerved by Bailifs, who are generally perſons of little or no value, and therefore not to be truſted with the breaking open and ranſacking of houſes upon every ſlight occaſion. See Co. l. 11. 82. a. 4. Lewes Bowles caſe.

Co. l. 5. 101. b. 3. in *Penrudducks* caſe. 18 If a nuſance be levied to the prejudice of anothers franktenement, the Law doth permit the party grieved to abate the nuſance before he ſuffer any prejudice thereby, and by that means prevent the damage, before he be prejudiced by it. Per Popham cum tota Curia. Nuſance.

Co. l. 5. 115. b. 3. in *Foliambs* caſe. 19 To prevent any further waſte, a writ of Eſtrepement lyeth in an action of waſte at any time, as well before Judgement, as after Judgement and before execution. Waſte. Eſtrepement.

Co. l. 6. 51. a. 3. in *Boſwels* caſe. 20 To prevent Simonie, or any thing that might ſavour thereof, the Plaintif in a Quare Impedit before the Statute of Weſtm. 2. cap. 5. did at the Common Law recover no damages; for the Law doth ſo abhorr Simonie, that it giveth to the Patron no recompence either for his preſentment or for his diſturbance thereof. Simonie.

Co. l. 6. 74. b. 2. in Sir *Drue Druries* caſe. 21 In Sir Drue Druries caſe in the 6. Report the Juſtices ſaid, that it did behove them to have good conſideration in all caſes depending before them, not only of the preſent caſe in queſtion, but likewiſe of the conſequences thereof, viz. what general prejudice might happen thereupon either to the King or the Subject; So if a ward ſhould be knighted after the grant of the wardſhip under the Great Seal, if his knighthood might excuſe him from the value of his marriage, when he might be knighted not only by the King, but likewiſe by his Lieutenants in Ireland or elſewhere, this would tend very much to the damage both of the King and Subject, for none would then purchaſe any wardſhip upon ſuch uncertainties; and therefore in that caſe his knighthood ſhall not excuſe him from the value of his marriage, which was veſted in the Lord upon his anceſtors death. Wardſhip. Knighthood.

Co. l. 7. part 1. 18. b. 2. in *Calvins* caſe. 22 The Common Law by inhibiting an Alien born to be capable of Inheritance in England, prevents three great inconveniences; for otherwiſe, 1. The ſecrets of the Nation might thereby be diſcovered, 2. The revenues thereof (being indeed the ſinews of warr, and the ornament of peace) might be taken and enjoyed by Strangers born, 3. It might at laſt bring the Nation to ruine and deſtruction, 1. Tempore belli, for then Strangers might fortifie themſelves in the heart of the Realm, not much unlike the Trojan horſe in Virgil, 2. Tempore Pacis, for they having gotten into their hands a great part of the Inheritance of the Commonwealth, and not being capable to ſerve of Juries, there would be a failer of Juſtice, &c. Alien.

Co. l. 9. 56. b. 2. in the *Poulters* caſe. 23 To prevent miſchief and oppreſſion in the Commonwealth, Conſpirators are Inditable by the Common Law, albeit they put nothing in execution by any overt act, as if they ſhall be found guilty of conſpiring to indict and acquit any, though they put nothing thereof in ure. Conſpiracy.

Co. l. 9 69. a. 4. in *Mackalleys* caſe. 24 To prevent eſcapes upon arreſts, the Law doth not enjoyn a Serjeant or Bailif ſworn and commonly known (though not by the party arreſted) to ſhew his mace or warrant, nor a ſpecial Bailif to ſhew his warrant without demand, leſt in the mean time the party arreſted may eſcape; but it ſhall be warning and warrant enough to ſay, I Arreſt you. Arreſts.

25 To

Things in action.

25 To prevent multiplication of controverſies and ſutes, great oppreſſion of the people, (principally of terre-tenants) and the ſubverſion of the due and equal execution of Juſtice, the wiſdom and policy of the Sages and Founders of our Law have provided, that no poſſibility, right, title, or thing in action ſhall be granted or aſsigned to ſtrangers; and as they cannot be granted by the act of the party, ſo right of action cannot be transferred by act in Law, as unto the Lord by eſcheat, neither ſhall the Lord of a Mannor have things in action, as appears in 22 Aſſ. pl. 37. &c. And in the Marquels of Winchelters caſe Right of action to land was not given to the King by an Act of Attainder: And all this was for the quiet and repoſe of terre-tenants: Howbeit, all rights, titles, and actions may by the like prudence and policy of the Law be releaſed to the terre-tenant, for the ſame reaſon of his repoſe and quiet, and for the avoidance of contentions and ſutes, and that every one may live in his vocation in peace and plenty. Co. l. 10. 48. a. 3. in *Lampets* caſe. Co. l. 3. fol. 1.

Eccleſiaſtical livings.

26 To preſerve Eccleſiaſtical poſſeſſions from alienation in prejudice of the Succeſſor, the prudence of the Sages of the Law did provide, that no ſole Corporation ſhould be truſted with the diſpoſition of his poſſeſſions, as to bind his Succeſſors, but in ſuch caſe they were to have the conſent of others, as the Biſhop was to have the conſent of his Dean and Chapter, the Abbot of his Covent, the Parſon of his Patron and Ordinary, & ſic de cæteris. Co. l. 10. 60. a. 3. in the Biſh. of *Sarums* caſe.

Auditor of the Court of Wards.

27 The Law to prevent any miſcarriage in matters of Judicature, hath provided, that no judicial office ſhall be granted in reverſion, and the rule of Law in this point is, Officia Judicialia non concedantur antequam vacent; And the reaſon is, to prevent a great inconvenience which may inſue thereupon; for that he, who at the time of the grant in reverſion may be able and ſufficient to ſupply the office of Judicature, and to adminiſter equal juſtice to the Kings Liege people, may, before the office fall, become unable and inſufficient to perform it; And therefore the Kings grant of the office of Auditor of the Court of Wards unto John Churchil and John Tooke in reverſion after the death of Walter Tooke, and William Curle, was adjudged void, becauſe it was an office of Judicature in that Court, and therefore could not be granted in reverſion. Co. l. 11 4. a. in Auditor *Curles* caſe.

Error in *London.*

28 If a man hath judgement given for him in London in the Sheriffs Court, or before the Maior and Sheriffs in the Huſtings of London, and the defendant to delay the execution of the judgement, ſues a writ of Error to remove the Record before the Maior, &c. in the Huſtings, or before certain Commiſsioners, if the judgement be given in the Huſtings, &c. and afterwards the defendant eloyns his goods goods out of the City, or waſts them, to the intent that the plaintif ſhould not have execution of thoſe goods; In this caſe, the plaintif may have a ſpecial writ directed to the Maior and Sheriffs to take order, that ſo many of the goods of the defendant as amount to the value of that which is recovered, may be ſafely kept to ſatisfie the plaintif, if he ſhall have the judgement affirmed for him, ſo as execution of the former judgement may be made, &c. of the ſame goods, &c. F.N.B. 24. a.

Security of the Peace.

29 Before a man can have ſecurity of the Peace againſt another, (leſt the cauſe of his complaint may ariſe rather from malice than any juſt ground of fear) the party complainant ought firſt to make oath, that he requires the Peace againſt the other for the ſafeguard of his body, and not out of malice; And this courſe is ſtil uſed in the K. B. and before Juſtices of Peace; And it was alſo the uſual courſe in the Chancery to make ſuch oath before a Maſter of that Court, before he could have it granted; but of later times that courſe hath been left in F.N.B. 79. h.

Chancery, which Fitzharbert ſaith is not well done, becauſe ſuch proſecution for the moſt part proceeds rather from malice, than any juſt cauſe of fear.

F.N.B. 113 a. 30 The King of right ought to ſave and defend his Realm as well againſt the Sea as againſt Enemies, that it be not ſurrounded and laid waſte, and to provide remedy for the ſame, and alſo to take order that his ſubjects may have their paſſage throughout the Realm by bridges and ſafe wayes, &c. And therefore if the banks of the Sea be broken, or the Sewers and drains be not ſcowred, that the freſh waters may have their direct courſe, the King for the prevention of ſuch damage as may happen by reaſon of ſuch defaults, might by the Common Law before any Commiſſions of Sewers, &c. grant commiſſions to inquire, hear, and determine ſuch defaults. Oyer & Terminer for Nuſances.

Pl. Co. 67. a. 2. in *Dyve & Maningbams* caſe. 31 The perſons mentioned in the ſecond branch of the Statute of 23 H. 6. 10. (viz. ſuch as were in ward by Condemnation, exemption, Capias utlagarum or excommunicatum, ſurety of the peace, or committed by command of the Juſtices, or Vagabonds refuſing to ſerve) were not bailable by the Common Law (before that Statute) for the Inconveniences which might enſue thereupon. Bail mens.

Co. l. 5. 83. b. in the caſe of Market overt. 32 No ſale of ſtolen goods, but in a Market overt, alters the property; And therefore if ſtolen plate be openly ſold (in London or elſewhere in any other market overt) in a Scriveners ſhop, that ſale alters not the property, becauſe it is no market overt for plate; it is otherwiſe, if it be openly ſold in a Goldſmiths ſhop; but if the ſale be there behind a hanging or Cupboard, or in a ware-houſe, or other part of the houſe, and not openly, that paſſengers may obſerve it, ſuch ſale alters not the property; And this the Law hath ordained to prevent felony, &c. Vide Max. 191. 3. & 134. 14. Market overt.

Co. Inſt. pars 1. 6. b. 4. 31 It was reſolved in the C. B. Paſc. 10. Iac. that a wife cannot be produced as a witneſs, either againſt or for her husband, and one of the reaſons of that reſolution was, in reſpect it might be a cauſe of implacable diſcord and diſſention betwixt the husband and wife, and a mean of great inconvenience. Feme covert no witneſs for the Baron.

Hob. 36. *Dravies* caſe. 32 Drury brought a Quare Impedit againſt Kent the Incumbent and others; and upon furmiſe made to the Court, that Kent did fell timber upon the Glebe, and upon the lands of Copyholders, holding of a Manor parcel of the Rectory, the Court granted a Prohibition to prevent further waſte. Prohibition.

Hob. 62. *Barrow & Lew. Lyn.* 33 The private delivery of defamatory Letters was criminal and cenſurable in the Starr-chamber (and now, as it ſeems, indictable in the Upper Bench) becauſe ſuch quarrelious Letters tend to the breach of the peace, and to the ſtirring of Challenges and quarrels, and therefore the means of ſuch evils, as well as the end, are to be prevented. Star-chamber.

187 It moderateth the ſtrictneſs of the Law it ſelf.

Co. Inſt. part 1. 131. b. 1. 1 A Protection Moraturæ or Profecturæ have theſe clauſes in them, Præſentibus minimè valituris, ſi contingat ipſum, &c. a cuſtodia Caſtri prædicti recedere: Or ſi contingat iter illud non accipere, vel infra illum terminum à partibus tranſmarinis redire, according to the proviſion of the Statute of 13 R. 2. 16. nevertheleſs, if he return into England, and came over to provide Munition, Habiliments of warr, victuals, or other neceſſaries, it is no breach of the ſaid conditional clauſes, nor againſt the ſaid Act, for that in judgement of Law coming for ſuch Protection.

things

things as are of neceſsity for the maintenance of the warre, Moratur (he doth ſay) according to the intention of the Protection and Statute aforeſaid.

annuity. 2 If A. be ſeiſed of lands, and he and B. grant a rent charge to one in fee, this *prima facie* ſeems to be the grant of A. and the confirmation of B. but yet the grantee may have a writ of annuity againſt both: Howbeit if two men grant an annuity of 20 l. per annum to another, although the perſons be ſeveral, yet he ſhall have but one annuity; but if the grant be Obligamus nos et utramque veſtrum, the grantee may have a writ of annuity againſt either of them, but he ſhall have but one ſatisfaction. Co. ibid. 144. b. 2.

judgement. 3 An action of treſpaſs was brought againſt Tilly and Woody for five horſes with charters taken, &c. Tilly pleads not guilty, and Woody makes title to him by a gift, and the plaintif traverſeth the gift, and thereupon they were at iſſue, and Tilly was found guilty, and the iſſue was found for Woody againſt the plaintif; In this caſe, albeit the iſſue was found againſt Tilly, yet the plaintif had not judgement againſt him; for it was found betwixt the plaintif and Woody that the plaintif had not title; and then in as much as it appeares to the Judges by the Record, that the plaintif had not title, they ex officio ought to give judgement againſt the plaintif. H. 7. E. 4. fol. 31. & Title Judgement 50 Pl. Co. 66. b. 3. *Dyve* and *Maningham*

The like. 4 An action of treſpaſs was brought by leſſee for years of Cattel taken, the defendant ſaith, that the Leſſor held of him by divers ſervices, &c. and for ſo much arrear he took the Cattel; the plaintif ſaith, there is nothing arrear, &c. and thereupon they were at iſſue, and it was found for the plaintif; And yet per totam Curiam the plaintif ſhall not have judgement, for albeit the defendant admitted the writ good, yet the Court did abate it, becauſe it appeared unto them that the defendant was Lord, againſt whom an action of treſpaſs lyeth not, for the Statute ſaith, Non idcirco puniatur dominus, &c. P. 10 E. 4. fol. 7. Title Office del Court 7. Br. 29. Pl. Co. ibid. Marbr. 3.

Appeal. 5 In an appeal by a feme, of the death of her father, albeit the defendant affirm the writ, yet the Court ex officio ought to abate it; for it appears to the Court, that no feme may have an appeal of the death of any, ſave of her husband, by the Statute of Magna Carta cap. 34. which was in affirmance of the Common Law. Pl. Co. ibid.

Non eſt factum. 6 In debt upon an obligation, if the defendant conclude his plea with judgement ſi actio, whereas his plea ſhould have been non eſt factum, yet if the Juſtices find that it was not his deed, ſo as the plaintif had no cauſe of action, they ought ex officio to give judgement againſt the plaintif. Vide 11. 9. Pl. Co. 66. b. 4.

Attaint. 7 The Statute of 23 H. 8. 3. of Attaints lyeth as well againſt executors, as the party himſelf, albeit the party that recovers upon the falſe verdict be only named in that Statute; for that Statute being made in mitigation of the rigor of the Common Law ſhall be taken by equity, and the words againſt the party that hath judgement are ſuperfluous, for it lyes againſt any that enjoyeth the thing loſt. Dyer 201. 65. 3 El.

188 *Verba ſemper accipienda ſunt in mitiori ſenſu.*

Slander. 1 If one ſay to another, that he is perjured, or that he hath forſworn himſelf in ſuch a Court, by theſe words an action may be maintained, for by theſe words it appears, that he hath forſworn himſelf in a judicial proceeding; but to charge another generally, that he hath forſworn himſelf, is not actionable, becauſe he may be forſworn in uſual communication, And benignior ſententia in verbis generalibus ſeu dubiis eſt præferenda. Vide 178, 11. Co. l. 4. 15. b. 1. in *Stanhop* & *Blubes* caſe.

Co. l. 4. 15. b. 3. in *Yeamans* caſe. 2 Yeamans charged Hext (being then a Juſtice of Peace) in theſe words, For my ground in Allerton, Hext ſeeks my life; Theſe words being taken in mitiori ſenſu were not actionable, 1. becauſe he may ſeek his life lawfully upon juſt cauſe, and his land may be holden of him; 2. ſeeking of his life is too General, and for ſeeking only no puniſhment can be inflicted by the Law. Slander.

Co. l. 4. 17. b. 4. in *Iames & Rutlechis* caſe. 3 In an action upon the caſe for words, as an Innuendo cannot make the perſon certain, which was uncertain before, ſo neither can an Innuendo alter the matter or ſenſe of the words themſelves, as to ſay, that ſuch an one was full of the Pox (innuendo) the French Pox, this Innuendo doth not perform his proper office, for it ſtrives to extend the general words the Pox to the French pox by Imagination of an Intent, which is not apparent by any precedent words, unto which the Innuendo may refer, And the words themſelves ſhall be taken in mitiori ſenſu. Slander.

Co. l. 4. 20. a. 1. in *Barbams* caſe. 4 Barham brings an action upon the caſe againſt Nethershall, the words were theſe, Mr. Barham did burn my barn (innuendo a barn with corn) with his own hands, and none but he: And it was adjudged that they were not actionable, for it is not felony to burn a barn, unles it be parcel of a Manſion houſe, or full of Corn; And in this and the like caſes agitur civiliter, and not criminaliter, and verba accipienda ſunt in mitiori ſenſu: Alſo the Innuendo will not ſerve, when the words themſelves are not ſlanderous. Slander.

Co. l. 6. 6. a. Sir *John Molyns* caſe. 5 E. 3. is Lord, the Abbot of Weſtm. Peſne, and C. tenant of the Manor of D. the tenant is attainted of treaſon, and office thereof found, E. 3. grants the Manor to Sir John Molyns, and his heirs, Tenendum de nobis hæredibus, & ſucceſſoribus noſtris, et aliis capitalibus dominis feodi illius per ſervitia inde debita & de iure conſueta: In this caſe, the queſtion was, of whom and how this Manor was holden? And here albeit it was objected that the Tenendum, being by the ſervices (inde) thence due, at which time nothing was due to the Peſne, the Peſnalty continued ſtill extinct, and therefore that it was holden immediately of the King; yet it was adjudged, that by thoſe words of the Patent the Peſnalty was revived, for when thoſe words may be interpreted two manner of wayes, viz. either immediately of the King, or mediately by the Peſne, reaſon requires, that the words ſhould be underſtood in the milder ſence, eſpecially when that appears to be the Kings intention, and tends more to his honour, and it is not reaſonable, that the Peſne, who offended not, ſhould loſe his tenure. Tenure.

Co. l. 6. 6. b. *Wheelers* caſe. 6 H. 8 grants land, Tenendum de nobis et hæredibus noſtris per ſervitium unius Roſæ Rubeæ Annuatim ad feſtum Nativitatis, Sancti Iohannis Baptiſtæ, ſolummodo pro omnibus & omnimodis aliis ſervitiis: And this was adjudged tenure in ſoccage in Chief, and not tenure in Capite by Knightſervice; for albeit it was objected, that the patentée could not hold onely by the Roſe, becauſe homage, or (at leaſt) fealty was incident to every tenure, and therefore that the King was deceived in his grant, yet it was reſolved, that for as much as fealty is incident to every rent ſervice, the Law annexeth fealty to the rent, and theſe words, viz. Pro omnibus aliis ſervitiis, are to be underſtood of other ſervices, which the Law doth not imply or add to it, ſo as the tenure ſhall be by a Roſe and fealty; and this is the benign conſtruction of Law, as near the Kings intention as may be, by which conſtruction the ſaid words pro omnibus aliis ſervitiis have ſome effect, and ſhall not be rejected as vain, and of no force. Tenure.

Co. l. 6. 66. b. Sir *Moyle Finches* caſe. 7 When a Manor hath once had the reputation of a name, by which it hath been commonly known, albeit the demeſnes be afterwards ſe- Name in reputation.

vered

vered from it, ſo as it ceaſeth to be a Manor, yet in grants, fines, or other amicable conveyances it may paſs ſtill by the name of a Manor, (but not in Adverſary writs, &c.) ſo if I have a Park by the licenſe and grant of the King, and by the name of a Park it is commonly known, and after I ſurrender my patent to the King, by which (in Law) it remains no longer a Park; yet it having once obtained the name of a Park in truth, it is a good ground for the reputation and continuance of the name of a Park afterwards, and by that name may paſs in conveyances; And all this by a favourable conſtruction of Law, &c.

Remainder eſts. 8 If land be granted to A. for life, the remainder to B. for life, and if B. die, living A. that then it ſhall remain to C. for life; In this caſe, this word (then) ſhall not be intended preſently during the life of A. as theſe words prima facie do ſeem to import, but they ſhall have a beneficial conſtruction, viz. that then it ſhall remain, as a remainder ought to doe, that is to ſay, to veſt then, and to be executed after the death of A. So if a gift in tail be made upon condition, that if he doe ſuch an act, that then the land ſhall remain to his right heirs, this word then is not ſo to be underſtood, as if it ſhould avoid the eſtate tail, and to be executed preſently upon the act performed, but it is to be intended, that upon the act performed the remainder ſhall veſt, and after the eſtate ended ſhall be executed, and not before. Pl.Co.32.a.1. in *Colthrift & Beinſhins* caſe.

189. Conſtrueth things according to Common poſſibility or intendment; And therefore

Judges. 1 Regularly Judges ought to adjudge according to common intendment of Law. Co. Inſt. part 1. 78. b. 1.

Parſon. 2 By intendment of Law every Parſon or Rector of a Church is ſuppoſed to be reſident on his benefice, unleſſe the contrary be proved. Vide 2. 3.

Manor. 3 By common intendment one part of a Manor ſhall not be of another nature than the reſt.

A Will. 4 By common intendment a Will ſhall not be ſuppoſed to be made by colluſion.

Bonū. vicinus. Poſſibilia. 5 In facto, quod ſe habet ad bonum & malum, magis de bono, quam de malo lex intendit. Lex intendit vicinum vicini facta ſciré. Nulla impoſſibilia aut inhoneſta ſunt præſumenda, vera autem et honeſta et poſſibilia.

Guardian. Ward. 6 Lex ſemper intendit quod convenit rationi: As in this caſe, the Guardian ſhall have the cuſtody of the land, until the heir come to his full age of one and twenty years, becauſe by intendment of Law the heir is not able to do Knight ſervice before that age, which is grounded upon apparent reaſon.

Iurors. 7 By the Common Law in a plea real, mixt, or perſonal, there ought to be 24. of the Hundred (where the cauſe of action ariſeth) returned for their better notice of the cauſe, for vicini vicinorum facta præſumuntur ſcire: Howbeit, by the Statute of 27 Eliz. 6. In a plea perſonal, if two Hundreders appear, it ſufficeth; And in an Attaint albeit the Jury is double, yet the Hundreders are not double. Co. ibid. 157. a. 1. & 158. b. 2.

Fee-ſimple. 8 When a man is ſaid to be ſeiſed in fee, without more, it ſhall be intended in fee ſimple, and it ſhall not be intended by this word (in fee) that a man is ſeiſed in fee tail, unleſs this addition be put to it, fee tail; for fée ſhall be taken (ſecundum excellentiam) for the higheſt and beſt fee, and that is fee ſimple. Co. ibid. 189. a. 2. Littl. §. 293.

Verdict. 9 If a verdict find, that a man hath duas partes Manerii, &c. in tres partes Co. ibid. 192. b. 3.

partes diviſæ, this ſhall not be intended to be in common; but if the verdict be inter partes dividendas, then it ſeems that they are tenants in Common by the Intendment of the verdict.

Co. ibid. 226. a. 1. 10 The Lord by eſcheat, albeit his eſtate is created by Law, ſhall not plead a condition to defeat a free hold without ſhewing of it, becauſe the deed doth belong unto him, and therefore it is preſumed that he hath it in his cuſtody: So likewiſe a Tenant by the Curteſie ſhall not plead a condition made by his wife, and a re-entry for a condition broken, without ſhewing the deed; for albeit his eſtate be created by Law, yet the Law doth preſume, that he had the poſſeſſion of the deeds and evidences belonging to his wife. Pleading a condition. Lord. Tenant by curteſie.

Co. ibid. 237. b. 3. 11 One of the reaſons why a deſcent taketh away the entry of him that right hath, is, for that the heir of the diſſeiſor cannot ſuddenly (by intendment of Law) know the true ſtate of his title: And in regard many advantages follow the poſſeſſion and tenant, the Law taketh away the entry of him, that would not enter (when he might) upon the Anceſtor, (who is preſumed to know his title) and driveth him to his action againſt the heir, who (by intendment) may be ignorant thereof. Deſcent a toll entry.

Co. ibid. 238. b. 4. 12 At the Common Law, if Lands were conveyed out of the degrees, the demandant was driven to his writ of right; for that in regard of ſuch long poſſeſſion in ſo many mens hands (which the Law doth ever reſpect and favour) the Law did preſume, that the preſent tenant had beſt right to the Land: But this is now altered by the Statute of Marlebr. cap. 29. which gives a writ of entry in the Poſt in that caſe. Writ of right.

13 Max. 22, 31.

Littl. §. 440. Co. 261. 14 If a deſcent be caſt when the diſſeiſée is out of the Realm, albeit he be not there in the Kings ſervice, that deſcent ſhall not take away the entry of him that right hath; becauſe he that is out of the Realm cannot, by intendment of Law, have conuſance of the diſſeiſin, no more than a thing done out of the Realm can be tried within the Realm by a Jury of 12 men; but it is otherwiſe, if ſuch diſſeiſee were within the Realm at the time of the diſſeiſin, or the deſcent caſt. Deſcent out of the Realm.

Co. ibid. 194. b. 4. 15 In a writ of right or an Appeal, when the tenant or appellee failed of witneſſes, evidences, or other proofs, the Law did inſtitute trial by Battel, becauſe the preſumption of Law is, that God will give victory to him that hath right. Battel.

Co. ibid. 344. b. 1. 16 At the Common Law, if the Church were once full, the Incumbent could not be removed, and plenartie generally was a good plea in a Quare Impedit, or Aſſiſe of Darrein preſentment, and one of the reaſons hereof was, for that the Law intended, that the Biſhop who had Cure of ſouls within his diocels, would admit and inſtitute an able man for the diſcharge of his duty and his own, and that the Biſhop would do right to every Patron within his diocels: beſides, Inſtitution is a Judicial act, and in nature of a Judgement, and therefore intended to be juſt. Plenarty.

Co. ibid. a. 4.

Co. ibid. 294. a. 3. 17 The four Knights Electors of the grand Aſſiſe are not to be challenged, for that in Law they be Judges to that purpoſe, and Judges and Juſtices cannot be challenged, becauſe they are intended by Law to do right: And for the ſame reaſon it is, that Noblemen, who in caſe of High Treaſon are to paſs upon a Peer of the Realm, cannot be challenged, becauſe they are Judges of the fact; and therefore (by intendment of Law) will give a righteous judgement, Res Judicata pro veritate accipitur. Challenge.

Co. ibid. 373. a. 4. 18 If rent be behind for 20 years, and the Lord make an acquittance for the laſt that is due, all the reſt are preſumed to be paid, and the No averment againſt preſumption in Law.

the Law will admit no proof against this presumption: So if a man be within the four Seas, and his wife hath a Child, the Law presumeth, that it is the child of the husband, and against this presumption the Law will admit no proof: If a man that is innocent be accused of felony, and for fear flyeth for the same, albeit he judicially acquitteth himself of the felony; yet if it be found that he fled for the felony, he shall, notwithstanding his innocency, forfeit all his goods and chattels, debts and duties: for as to the forfeitures of them the Law will admit no proof against the presumption in Law grounded upon his flight. Vide 79. 1.

Warranty. 19 In a feoffment by deed, albeit in the clause of warranty it be not mentioned to whom, &c. yet it shall be intended to the feoffee. Co. ibid. 383. b. 2.

Titles. 30 A Layman may prescribe in modo decimandi, but not in non decimando, because a Layman is but in foure special cases capable of Tithes at the Common Law, and therefore without special matter shewed, it will not be intended, that he hath any lawfull discharge: Vide 2, 5. Co. l. 2. 44. a. 4. in the Bp. of *Winchesters* case, & Co. ibid. 45. a. 1.

Limitation of uses. 21 If baron and feme levy a fine of land, whereof they are seised in right of the feme, and the baron only declare the use of the fine, this declaration shall bind the feme, if her dissent appear not; for when she joyns with the baron in the fine, it shall be intended (if the contrary appear not) that she joyned also with him in agreement for the declaration of the uses of the fine: So if baron and feme sell the land of the feme to another for money by parol, and after levy a fine to the vendee and his heirs, this shall bind the feme without any writing proving her assent. Vide plus ibid. & Dyer 290. pl. 61. Co. l. 2. 57. a. 4. in *Beckwiths* case.

Attornment. 22 If the reversioner out his lessee for life, and make feoffment in fee, and the lessee re-enter, this is a good attornment, and yet peradventure he has not notice of the feoffment which was made of the land, and without notice the attornment is not valid; Howbeit, in regard it is intended by Law, that the lessee cannot be misconsant of such feoffments as are made of the land, the Law (in such case) doth imply notice. Co. l. 2. 68. b. 2. in *Tookers* case.

Limitation. 23 By the Statute of 32 H. 8. cap. 2. of Limitations, in an Avowry or Conusance for rent, fute or services, the seisin shall be within 40 years before such Avowry or conusance; Howbeit, that Act shall not extend to such rent or service, as by common possibility may not happen or become due within 40 years; as if the seignorie consists of homage and fealty only, in this case the tenant may live 40 years after they are made: In like manner if the service be to cover the Hall of the Lord, or to march with him when there shall be warr betwixt the King and any of his enemies, such casual services, as by common possibility cannot happen within 40 years, are not within that act: Where is the same Law also of a Formedon in descender, for the tenant in tail may live 50 years after the discontinuance; And therefore in Fitz williams case in 10 & 11 Eliz. it was adjudged, that Formedons in descender were not within the Statute for the common possibility afore-said. Vide plus ibid. Co. l. 4. 10. b 4. in *Bevils* case. Dyer 278. pl. 2.

Sale by the Sheriff 24 The Sheriff reciting, that A. had a lease of a Parsonage pro termino diversorum annorum extunc ventur. sold it by force of a Fieri facias to another; and this sale was adjudged good, because by common intendment the Sheriff cannot have precise knowledge of the commencement and end of the term: The Law is otherwise in case of an Inquisition, because a term cannot be extended without shewing the beginning and ending thereof, to the end that the debtor may have the residue of the term, when the debt is satisfied, &c. Co. l. 4. 74. a. 3. *Palmers* case.

25 Albeit

Co. l. 4. 77. b. 2. in the caſe of Corporations. 25 Albeit a Corporation have a commencement by Charter, and (by conſequence) within memory, it be expreſſed in their Charter that the choice of their Maior, Bailifs, and other principal Officers ſhall be by the Commonalty, yet if by a long uſage they have choſen them by a ſelect number of the principal of the Commonalty or of the Burgeſſes, although no ſuch conſtitution can be ſhewd to warrant ſuch election, yet (to avoid popular confuſion) ſuch election is adjudged good in Law, becauſe it is preſumed and intended, that ſuch ſpecial election (which could not commence without common aſſent) was formerly made and agreed upon. Vide infra 192. 2. Corporation.

Co. l. 5. 12. a. in *Sanders* caſe. 26 If a man hath land, in part whereof there is a Cole-mine open, and he demiſeth the land to one for life, or for years, the leſſee may digg in the mine; for in as much as the mine is open at the time of the leaſe made, and he demiſeth all the land, it ſhall be intended, that his intent is here general, as his demiſe is, viz. that the leſſee ſhall take profit of all the land, and (conſequently) of the mine within it: Vide 17 E. 3. 7. And ſo the doubt in F. N. B. 149 c. well explained. Cole-mine.

Co. l. 5. 96. b. 4. in *Goodals* caſe. 27 A. ſeiſed of lands in fee by deed indented and enrolled covenants with B. that if B. ſhall pay to A. his heirs or aſsigns 100 l. ſuch a day at ſuch a place, that then A. and his heirs will ſtand ſeiſed of the land, to the uſe of B. and his heirs; before the day of payment A. having iſſue a ſon makes his will in writting, and his wife executrix thereof, and dies, the wife renounceth the executorſhip, and then takes adminiſtration: In this caſe, this word Aſsigns ſhall be only intended of the aſsigns of the eſtate of A. for he hath an eſtate in him aſsignable, and the Law will never ſeek an aſsignee in Law, when there may be an aſsignee in fact: but if A. had made a feoffment in fee, upon condition that the feoffee ſhall pay the mony to the feoffor, his heirs or aſsigns, &c. there becauſe he hath departed with his whole eſtate in fee, and hath but a naked condition, which cannot be aſsigned over, the Law, which never rejects any word, if by any reaſonable conſtruction it may take effect, will make conſtruction what perſon ſhall be moſt apt (as his aſsignee in Law) to receive the money, and theſe the Law adjudgeth to be his executors, becauſe they repreſent the perſon of the teſtator for all goods and chattels, and in ſuch caſe the feoffor cannot have any aſsignee in fact. Vide 27 H. 8. 2. 2. Aſſignee in Law, and in fact. Diverſity.

Co. l. 5. 97. 2. 4. in *Goodals* caſe. 28 In a ſpecial verdict all other matters ſhall be intended and ſupplied, but only that, which the Jurors have referred to the conſideration of the Court, as it was adjudged in 30 & 31 Eliz. in B. R. inter Scovel & Cabel: and therefore in Goodales caſe in the Fifth Report, albeit no title was there found for the defendant, but was as a meer ſtranger, yet the Court never doubted thereof, but by intendment took it for granted, and took only into their conſideration that, whereof the Jurors made doubt, viz. whether the payment there were a good performance of the Condition. Verdict ſpecial.

Co. l. 5. 105. *Aldens* caſe. 29 In an Ejectione firmæ at the Common Law Antient Demeſn is a good plea to the Juriſdiction of the Court, becauſe by common intendment the title and right of the Land will thereby come in debate, and the plaintif ſhall recover the poſſeſsion of the land, and have execution by habere facias poſſeſſionem; ſo alſo in Replevin, writ of Meſn, writ of Ward in accompt againſt Guardian in Socage, &c. Antient demeſn is a good plea for the apparence, and common intendment, that the realty will come in debate; the like Law is alſo in accompt againſt a Baſtif, becauſe it is brought for the iſſues of the land, which is antient demeſn; and therefore ought to be brought and determined in the Court of antient demeſn, and not elſwhere, &c. Antient demeſn.

Co. l. 6. 16. a. *Colhyers* caſe. 30 By intendment of Law a deviſe ſhall be for the benefit of the de- Deviſe.

deviſee, and not to his preiudice, as if land of the value of 3 l. per annum be deviſed to A. and that A. ſhall pay out of it 50 s. per annum, in this caſe A. hath but an eſtate for life, for he may pay it out of the profits of the land, and is ſure to be at no loſs; but if it be deviſed to B. for life, the remainder to A. paying 50 s. per annum out of it; In this caſe, A. hath fee ſimple, becauſe after the payment thereof A. may die before he can receive ſatisfaction for the ſame out of the profits of the land; and therefore ſuch a deviſe ſhall be fee ſimple, becauſe the Law intends that the deviſe was intended for his benefit, and not for his preiudice.

Error in popular actions.

31 B. brings a plaint in the Court of Ludlow (which is a Court of Record) againſt C. tam pro Domina Regina quam pro ſeipſo, upon the Statute of 4 & 5. Ph. & M. cap. 5. for exerciſing the trade of a woollen-weaver without having ſerved ſeven years as an Apprentice, &c. and had judgement, &c. hereupon C. brings a writ of Error, &c. and for one of the Errors aſsigns, that albeit Ludlow be a Court of Record, yet it is not ſuch a Court as is intended by the Statute for cauſes of that nature; for that the antient uſage in all ſuch popular actions or informations hath been, that albeit the Informer tam pro domina Regina quam pro ipſo exhibits the Information, yet if the defendant pleads a ſpecial plea, the Queens Attorney ſhall reply alone, and it was intended by the makers of the ſaid Act, that the ſute ſhould be in ſuch a Court, where the Kings Attorney may attend, for the benefit which the King may have by ſuch a ſute, and that is in the four Courts at Weſtminſter; And thereupon the Judgement was reverſed. Vide Dyer 236. 24.

Co. l. 6. 19. b. *Gregories* caſe.

Admiſſion and Inſtitution.

32 He that comes in by Admiſsion and inſtitution, comes in by a judicial act, and the Law preſumes that the Biſhop, who hath the cure of the ſouls of all within his dioceſs, for which he ſhall anſwer at his fearfull and final account (in reſpect whereof he ought to defend them from all Schiſmatiques, Heretiques, and other Inſtruments of the devil) will not do, or aſſent to any wrong to be done to any Parſonage within his dioceſs, but if the Church be litigious, will inform himſelf of the truth de Iure Patronatus, and ſo do right.

Co. l. 6. 49. b. 1. in *Boſwels* caſe.

Peerage.

33 The perſon of a Peer of the Realm, or a Counteſs, Baroneſs, &c. by marriage or deſcent, ought not to be arreſted for debt or treſpaſs; becauſe the Law preſumes, that they have ſufficient in lands and tenements, whereby they may be diſtrained; and therefore in ſuch caſes iſſues only ſhall go out againſt their lands: And albeit a Counteſs, Baroneſs, &c. in reſpect of her ſex, cannot ſit in Parliament, yet ſhe is a Peer of the Realm, and ſhall be tried by her Peers, as appears by the Statute of 20 H. 6. cap. 9. which is but a declaration of the Common Law. Vide plus ibidem.

Co. l. 6. 52. b. 2. in the Counteſs of *Rutlands* caſe.

Ceſtuy que uſe.

34 If Ceſtuy que uſe had granted his uſe by his will, no colluſion could have been averred upon ſuch a will to obtain the wardſhip of his heir; for Nemo præſumitur eſſe immemor ſuæ æternæ ſalutis, et maxime in articulo mortis, et omne teſtamentum morte conſummatum eſt: And therefore the Statute of 4 H. 7. 10. which gives the wardſhip of Ceſtuy que uſe, makes exception, when any will is by him declared. Vide 27 H. 8. 14.

Co. l. 6. 76. a. 3. in Sir *Geo. Curſons* caſe.

Divorce.

35 Ch. and Eliz. were divorced in the Court of Audience ratione ætatis minoris et impubertatis Eliz. after they had lived ten years together, and had iſſue a daughter; and afterwards Ch. marrying another woman, by another Sentence in the Eccleſiaſtical Court the firſt marriage was declared void, the ſecond good, and liberty given them ad exequenda conjugalia obſequia; The ſecond wife dies, and Ch.

Co. l. 7. 42 b. *Kennes* caſe.

marries a third wife, and hath iſſue another daughter; The laſt daughter is found heir by office, the firſt traverſeth the office by bill in the Court of Wards: And in this caſe it was reſolved, that albeit the firſt was in truth a lawfull marriage, yet the Sentence of divorce being in force, no averment could be admitted againſt it, becauſe the Spiritual Judge having juriſdiction thereof, before the Sentence were repealed, it was intended by Law to be Juſt, and our Law gave credence thereunto: for, Res Judicata pro veritate accipitur. See Dyer 13. pl. 62.

Co. l. 9. 52. b. 4 in *Hickmots* caſe.

36 If the Obligee confeſs himſelf to be diſcharged of all bonds betwixt him and the Obligor, this (by intendment of Law) is a releaſe or diſcharge of all bonds betwixt them; for albeit the word diſcharge is not properly ſaid of the part of the Obligee, but of the Obligor, (for the Obligor is to be diſcharged,) yet (in judgement of Law) ſuch an acknowledgement amounts to a diſcharge of the Obligor of all ſuch duties. Releaſe of bonds.

Co. l. 9. 109. *Meriet Treſhams* caſe.

37 In debt againſt an executor he cannot plead quod ipſe non habet, &c. aliqua bona, &c. præter bona, &c. quæ non ſufficiunt ad ſatisfacienda debita prædicta; but he ought to plead, quod non habet, &c. bona, &c. præterquam bona & catalla ad valentiam of a certain ſumm, & non ultra, quæ eiſdem debitis obligata & onerabilia exiſtunt; for the firſt plea is inſufficient for the uncertainty (vide Max. 162. pl. 61.) and the other he ought to plead, becauſe he being privy and repreſenting the perſon of the teſtator, hath (by intendment of Law) notice of the certainty and certain value of the goods, and therefore in ſuch caſe ought to plead certainly, as aforeſaid; The like Law is of an adminiſtrator for the goods of the Inteſtate. Plea of Executor.

Co. l. 11 13. a. 1. in *Priddle* and *Napp.rs* caſe.

38 Of Impropriations formerly given to Monaſteries, not only thoſe which were truly Impropriate, but likewiſe ſuch as had been and were ſo in reputation, were given to H. 8. by the intendment of the Statutes of Diſſolution; for albeit in thoſe Statutes there is a ſaving of rights, yet the Founders, Donors, &c. are excepted out of that ſaving, ſo as they are bound by the body of the Act. Appropriations.

Co. l. 11. 16. a. 4. in Doct. *Grants* caſe.

39 A Preſcription, that every Inhabitant in the parish is to pay 2 s. in the pound according to the value of their houſes yearly, inſtead of Tithes, is a good preſcription; becauſe (by intendment of Law) the commencement thereof might be lawfull, for it might be ſo by compoſition for the land before the houſes were built. Tithes.

Pl. Co. 28. a. 4. *Colthrift* & *Beinſhin*. Vide ibid. 31. a. & 33 a. 4. & 16. a. 3.

40 It is a Principle in Law, that a barr is good, if it be certain, to a common intent; as if a Meſſuage be demiſed to A. for life, the remainder to B. for life, ſi ipſe B. vellet inhabitare in meſſuagio prædicto, &c. Here, in an Action brought by the leſſor for the recovery of the Meſſuage, &c. upon the condition broken, it is a good barr for B. to ſay, that after the death of A. he entred, without averring the time of his entry, viz. immediately after the death of A. becauſe (by intendment of Law) it will be preſumed he did ſo enter: So if one plead in barr, that A. died ſeiſed, and that B. entred, as ſon and heir to A. this is a good barr, and yet it may be that he was not his heir, for it is not expreſly ſaid, that he is his ſon and heir, but that he entred as ſon and heir, and yet in regard he pleads by way of barr, the beſt ſhall be intended for the defendant. In like manner in 27 Aſſ. pl. 31. Tit. Barr 303. & Br. Aſſiſe 272. In an aſſiſe brought by the heir, the tenant ſaith, that the father of the plaintif being tenant by the Curteſie, and yet in life, let his eſtate to the anceſtor of the tenant, who died ſeiſed of that eſtate, after whoſe death the tenant was in as ſon and heir, and demands Judgement ſi Aſſiſe, &c. And this was held a good barr, And yet he ſaith not, that he was the firſt that entred after the death of his Father, Plea in barr to a common intent good.

ther, and if he were not the firſt, he hath no title, for the land in ſuch caſe Occupanti conceditur, viz. to him that firſt enters, and that might be the plaintif: but yet the barr was held good, becauſe to a common intent it ſhall be taken, that the tenant was the firſt that entred after the death of the father, and if it were not ſo, the plaintif may and ought to ſhew it. Vide plus ibid. & infra 195. 27.

Capias pro fine. 41 If a man be condemned in treſpaſs, or in debt upon an obligation (where he denies his deed) at the ſute of the party, and after he is taken by Capias pro fine within the year at the Kings ſute, and committed to the Gaol, if the Gaoler ſuffer him to eſcape, the party ſhall have an action of debt for this condemnation againſt the Gaoler, and yet he was not committed to him at his ſute, but at the ſute of the King; Howbeit the Kings ſute ſhall ſerve the party in this caſe, becauſe the King was entituled to the fine by the party: but it is otherwiſe after the year, for then it will be intended, that the party hath accorded with him that was condemned; And therefore after the year he ſhall be put to ſue a Scire facias upon that Judgement. Vide Max. 63. pl. 4. F.N.B. 121. i.

Executor. Heir. Aſſets. 42 In debt againſt an Executor the plaintif need not count, that the executor hath aſſets; for it will be intended prima facie, that he hath aſſets; So likewiſe in debt againſt the heir, the plaintif ſhall never avert in his Count, that he hath aſſets; for the Law preſumes it prima facie; becauſe the Law preſumes, that the teſtator or anceſtor will not leave a greater charge upon the executors or heir, than he leaves benefit to diſcharge it. Co. l. 9. 94. a 3. in *will. Banes* caſe.

Perpetuities. 43 In the Argument againſt perpetuities in Corbets caſe, it was ſaid by Glanvile Juſtice, that betwixt the making of the ſtatute of 13 E. 1. de donis, and the ſtatute of 27 H. 8. of Uſes, ſuch a proviſo annexed to an eſtate tail, that it ſhould ceaſe as if the tenant in tail were dead, was never ſeen or heard of, and therefore he concludes, that it could not be done by Law: And ſo likewiſe concludes Littleton in the like caſe, that if any action might have been brought upon the ſtatute of Merton, cap. 6. De dominis, qui maritaverint illos, &c. ſi parentes conquerentur, &c. it ſhall be intended, that at ſome time or other, it would have been put in ure; And therefore he ſaith, that no action can be brought upon that ſtatute, in as much as it was never ſeen or heard, that any action was ever taken thereupon. Co. l. 1. 87. b. 4. in *Corbets* caſe. Little. f. 23.

Attaint. 44 By intendment of Law a verdict is true, and therefore the Law will admit of no new proof to defeat it: for albeit, where the defendants in an attaint give new matter in evidence to enforce the firſt verdict, as they may, the plaintif ſhall be admitted to diſprove it; yet the plaintif ſhall never be ſuffered to produce any new matter in evidence, nor inforce the firſt by other matter afterwards diſcovered. Dyer 212. 34. 4 El.

Deviſe. Tenure. 45 A man intitles himſelf as deviſee of the whole land by the Statute of the 32 H. 8. of wills, and albeit he ſhewed not the tenure, it was adjudged well enough, for that it ought to come on the other part, and prima facie it ſhall be intended ſocage, becauſe moſt part of the land is ſo holden. Dyer 319. 16. 16 Eliz.

190 *Stabit præſumptio donec probetur in Contrarium.*

Co. Inſt. pars 1. 222. b. 3. 34 Aſſ. pl. 1. 1 If an agreement be made between two, that the one ſhall enfeoff the other upon condition in ſurety of the payment of certain money, and after the livery is made to him and his heirs generally, the eſtate is holden by ſome to be upon condition, for that the intent of the parties did not appear to be changed, but to continue at the time of the livery. Condition.

Co. ibid 227. b. 1 Dyer 81. 2 An iſſue found by verdict ſhall always be intended true, until it be reverſed by Attaint, and for that reaſon upon an Attaint no ſuperſedeas is grantable by Law. Plow. 49. b. Attaint.

Co. ibid. 310. b. 4. 3 If a man plead a feoffment of a Manor, he need not plead an Attornment of the tenants, for it will be intended that the tenants did attorn; But (if it be material) it muſt be denied or pleaded of the other ſide. Attornment.

Co. ibid. 361. a. 3. 4 The iſſue of tenant in tail may falſifie a recovery had againſt tenant in tail by default, nihil dicit, confeſſion, or demurrer; but if the recovery paſſed upon an iſſue tried by verdict, he ſhall never falſifie in the point tried, becauſe an attaint might be had againſt the Jurors, and albeit all the Jurors be dead, ſo as the attaint do fail, yet the iſſue in tail ſhall not falſifie in the point tried; becauſe, until it be lawfully avoided, pro veritate accipitur: As if the tenant in tail be impleaded in a Formedon, and he traverſeth the gift, and it is tried againſt him, and thereupon the demandant recovers; In this caſe, the iſſue in tail ſhall not falſifie in the point tried, but he may falſifie the recovery by any other matter; as that the tenant in tail might have pleaded a collateral warranty, or a releaſe, as Littl. putteth the caſe, or to confeſs and avoid the point tried. Falſifying a recovery.

Littl. §. 688.

Co. l. 4. 71. 2. 4. *Hyndes* caſe. 5 A. ſeiſed of land in fee, demiſeth to B. for years, and after by deed indented before Eaſter Term in 29 Eliz. bargains and ſells the land to C. and the ſame Term levies a fine to C. and his heirs, and afterwards in the ſame Term alſo the deed is inrolled, A. commits waſte, for which C. brings his action, whereunto A. pleads that C. was in by the fine, and not by the deed inrolled, and that he never attorned: upon which plea C. demurrs: In this caſe, although it was objected, that it ſhall be intended by Law, that the deed was enrolled the firſt day of that Eaſter Term, becauſe the Term as to divers purpoſes is but one day in Law, and the rather for that it doth not appear by the record, what day of the Term the deed was inrolled, but generally Term Paſch. and therefore it ſhall be intended to be enrolled the firſt day of the Term, and then C. being in by the deed and not by the fine, there needed no attornment: yet (in this caſe) it was reſolved by the Court, that it was true, that it ſhall be intended by preſumption of Law, that the deed was enrolled the firſt day of the Term; but Stabit præſumptio donec probetur in contrarium, and for as much as the plaintif by his demurrer hath confeſſed the enrollment to be after the fine, the preſumption thereby vaniſheth, and becomes of no force, and the mutual conſent and confeſſion of both parties ſhall ſtand. Fine. Deed inrolled.

Co. l. 5. part 1. 5. a. 2. & 7. b. 1. The Kings Eccleſiaſtical Law. 6 In the cauſe againſt Cawdry, being deprived by the High Commiſſion Court for preaching againſt the Common Prayer-book, it was objected, that the Commiſſioners were not nominated and appointed according to the Act of 1 Eliz. 1. becauſe the Juriſdiction and power given by that Act to the Crown, was to name ſuch Commiſſioners as were natural born Subjects, and not Aliens, and that it did not appear by the ſpecial verdict, that the ſaid Commiſſioners were natural High Commiſſion.

natural born Subjects; And therefore the Queen having only a power given by force of that Act, the nomination not pursuing the authority given unto her, was utterly void, &c. But to this it was answered and resolved, that they who were Commissioners, and had places of judicature over the Kings subjects shall be intended to be subjects born, and not Aliens; but if (in truth) they were Aliens, yet in respect of the general intendment to the contrary, it ought to be alleged and proved by the other party; for Stabitur præsumptioni donec probetur in contrarium.

Wardship. 7 By intendment of Law the heir being under the age of 21 years is not able to do Knight service, until his full age of 21 years, and herewith agrees Litt. fol. 22. yet this presumption of Law gives place to a judgement and proof to the contrary, according to the Maxime, Stabitur præsumptioni donec probetur in contrarium: And therefore when the King, who is the Soveraign and supreme Judge of Chivalrie, dubbs an Infant Knight, he thereby adjudgeth him able to do Knight service, & all persons are concluded to say the contrary; and therefore such an heir so made Knight shall be out of Ward and custody: Howbeit, he shall pay the value of his mariage, &c. Vide Ma. ca. cap. 3. Co. l. 6. 73. b. 4. in Sir Drue Druries case.

Arbitrement. 8 The submission to an award betwixt A. and B. was general, viz. of all actions, demands, &c. And the award was, that A. should pay B. twenty pounds. And in this case it was objected, that it did not appear, that the matter of the Arbitrement was the matter only that was betwixt them, because the submission was general of all actions, demands, &c. and therefore if the arbitrement were not made of all the matters in controversie, the award was void: To which it was answered and resolved, that it appeared by the award, that it was made de præmissis prædictis in conditione specificatis, which words import, that the Arbitrator had made it of all that, which was referred to him, and so it was to be intended, until the contrary were shewed and alleged by the other party. Co. l. 8. 98. a. 2. Baspoles case.

Fees. 9 Indentures subsequent are sufficient to declare the uses of a Recovery precedent, if nothing appear to the contrary to declare the consent of the parties to be otherwise. Co. l. 9. 11. 3. Downhams case.

Quo warranto. 10 In a Quo warranto for the claim of chattels of felons, &c. the defendant pleads, that the Abbot of S. lawfully had and enjoyed them, till the Abbey was granted to the King by the Statute of 27 H. 8. &c. and pleads also the Statute of 32 H. 8. which revives the privileges of Abbies, and that the King granted a Manor parcel of the Abbey, and cor, talia, et tanta privilegia, &c. unto him; And in this case, it was objected, that it did not appear by the claim of the defendant, what estate the Abbot had in the said Franchises, but generally, quod licite habuit & gavisus fuit, and so peradventure he might have them but by a lease for life or years, &c. To which it was answered and resolved, that a general having and enjoying of them shall be intended of a having and enjoying in fee simple, and that in such case a particular estate or interest shall not be presumed, unless it be specially shewed, &c. so the word Fee shall be intended fee simple, and not fee tail, unles it be so expressed. Vide supra, Max. 189. pl. 8. Co. l. 9. 27. The case of the Abbot de Strata Marcella.

No accessory where no principal. 11 If the principal in felony be attainted erroniously, either by error in process, or because the Principal being out of the Realm, &c. was outlawed, or for that he was in prison at the time of the outlawry, &c. yet the accessory shall be attainted; for the attainder against the principal stands in force, until it be reversed, and with this agrees 2 R. 3. f. 12. And in the 18 E. 4. 9 The principal was erroniously Co. l. 9. 119. 2. 4. in the L. Sanchars case.

but outlawed for felony, and the Acceſſory taken, indicted, arraigned, convicted, attainted and hanged, and afterwards the principal reverſed the outlawry, and was indicted and arraigned of the felony, and found not guilty, and thereupon was acquit: And here it might be demanded, that for as much as there cannot be an acceſſory without a principal, and in this caſe there being no principal, how ſhall the heir be reſtored to the lands which his father had forfeited by the ſaid unjuſt attainder? To this it may be anſwered, That the heir may enter or have his action; for now upon the matter by act in Law the attainder againſt the father is without any writ of Error utterly annulled; becauſe by the reverſal of the attainder againſt the principal, the attainder againſt the acceſſory, which depended upon the attainder of the principal, is ipſo facto utterly defeated and annulled: And this notably appears in an antient book in the time of E. 1. Tit. Mordanceſter 46. The caſe was this, A. was indicted of felony, and B. of the receit of A. A. eſſoigns himſelf and is outlawed, B. was taken, and putting himſelf upon the Inqueſt was found guilty, whereupon B. was attainted and hanged, and the Lord entred as in his eſcheat, and after A. came and reverſed the outlawry, and pleading to the felony was found not guilty, and thereupon was acquit, whereupon the heir brings a Mordanceſter againſt the Lord by eſcheat, who comes and ſhews all this matter, and it was demurred in Judgment thereupon, whereupon it was awarded, that the heir of B. ſhould recover ſeiſin of the land; for if B. had been then alive, he ſhould have gone quit by the acquittal of A. becauſe he could not be a Receiver of a felon, when A. was no felon. Vide plus ubi ſupra.

F.N.B. 45. d. 10 The writ of Indicavit ſhall not mention, that the tithes and offerings, which are in ſuite, amount to the fourth part of the Church, but decimas provenientes de centum acris, or of ſuch a Manor, and if thoſe Tithes be not of the value of the fourth part of the Advowſon, the other party may ſurmiſe it, and pray Conſultation; for the Law preſumes, that the plaintif would not bring an Indicavit, if the Tithes were not of that value, until the defendant allege ſomething to the contrary. Tithes.

Plow. 64. a. 3. 11 The return of a Sheriff, whether it be right or wrong, is preſumed by Law to be good, and ſhall ſtand in force, until it be reverſed by error. Return.

Plow. 77. a. 2. 12 Upon ſuggeſtion of conſanguinity in the wife of the Sheriff, and the wife of the plaintif, an Aſſiſe was directed to the Coroners, and an exception was taken to the ſuggeſtion, for that it was not ſhewed that they were of the whole blood; but the Court held, that it ſhould be intended they were of the whole blood, until the contrary were ſhewed on the other part. Aſſiſe directed to the Coroners.

Co. Inſt. part 1. 295. a. 1. 13 Wager of Law lyeth not, when there is a ſpeciality or deed to charge the defendant, but when it groweth by word, ſo as he may pay or ſatisfie the party in ſecret, whereof the defendant, having no teſtimony of witneſſes, may wage his Law, and thereby the plaintif is perpetually barred, (as Litl. ſaith 5. 514.) for the Law preſumeth, that no man will forſwear himſelf for any worldly thing. Wager of Law.

Co. l. 5. 98 a. *Burics caſe.* 14 The husband and wife were divorced Cauſa frigiditatis in the husband, he marries again and hath iſſue, this iſſue is legitimate; for the firſt marriage was diſſolved from the Matrimonial bond, and albeit the ſecond marriage be admitted voydable, yet it ſtands good, till it be avoided. Divorce.

Dyer 179. 42. 2. Eliz. 15 A man arraigned of homicide pleads not guilty, and is found guilty, but for the difficulty of the Clergy in the caſe, he was reprieved before Judgement, and it was moved to the Juſtices, whether or no he Bail.

be were bailable in the mean time; And it was held he was not, because he was more than a vehemently suspected person, being convicted of the offence: It had been otherwise if he had not been convicted; for by presumption of Law before conviction he shall not be deemed guilty before he be so found upon his trial, and the meaning of the Law in Bails is, quod stat indifferenter, whether he be guilty or not.

Dower. 16 An 2 Eliz. a woman sued for her Dower, and being put to prove her husbands death, she did it by two witnesses (whereof one was his brother) viz that being a Minister in 1. Mar. he fled for religion into Germany, and that by Merchants and other Englishmen, who used to travel and trade in those parts, they could never learn any tydings of his life, and therefore they did in their consciences rather think him dead than alive; And this proof was adjudged sufficient for the recovery of her Dower. Dyer 185. 65. 2. Eliz.

Fine reversed. 17 Cheney levies a fine, and after brings error to reverse it, and assigns non-age, and hath a Scire facias against the Conisee, and upon two Nihils the Court proceeds, and by witnesses and inspection reverse the fine: Cheney sells the land to others, upon whom the first Conisee enters, and the Mendees bring a writ of entry for disseisin, and against the former Judgement the tenant gives in evidence an exemplification of the examination of witnesses in Chancery, proving the full age, and albeit it seemed to the Court not available against the Judgement, yet the verdict past with that testimony, and afterwards was affirmed in attaint. Dyer 202. 63. 3. Eliz.

Office. Tenure. 18 Upon a Commission in nature of a Diem cluasit extremum a tenure in Socage is found of the Queen, as of her Barony of S. Afterwards a second Commission finds Knight-service tenure, as of the said Barony; After that a third Commission issues reciting, Quod compertum est per inquisitionem capt. post mortem A. tempore H. 5. that the said land was holden of the King in Knight-service in Capite, whereupon Knight-service in Capite is returned, prout per dictum Inquisitionem tempore H. 5. liquet; Now in this case, it was held, that the heir need not traverse the two last Inquisitions, because they were without warrant, but that the first office (although against the Queen) shall be allowed, until disproved by Scire facias, which shall issue out of the Record tempore H. 5. according to the Statute de Escaetoribus, 29 E. 1. Dyer 248, 81. 8. Eliz.

Leases good. 19 The Dean of Wells was deprived by the Bishop for having two dignities in the same Church, but he being afterwards restored by a Commission of Delegates, made divers demises, which were confirmed by the Bishop and Chapter, and after that he was again removed by another Commission of Delegates; yet the demises, which he made while he was Dean, were adjudged good. Dyer 273. 35. 10. El.

Devise. 20 Lessee for years deviseth his term to his executor for life, the remainder to A. and dies, the executor enters, and makes executor and dies, the executor of executor enters, and takes the profits for a year, and he in remainder brings account for the profits; And it was held, it lay not, 1. for want of privity, 2. the remainder of the term was void, (howbeit Weston, Welsh, and Harper, held it might be good by devise, though void by estate executed) 3. for that the executor had not declared to have the term as devisee, or as executor, and it shall be intended as executors, until the contrary be shewed. Dyer 277. 59. 10. El.

Debt against the heir. 21 In debt against the executor of the heir, there need no averment that assets descended to him, for it is so intended, unless the contrary be shewed. Dyer 344. 1. 18. Eliz.

22 In

Hob. 78. *Saint-Iohn & Saint-Iohn.*

22 In debt by Saint-John againſt Saint-John, Baſtiſt of Stockbridge, upon the Statute of 23 H. 6. 15. for not returning him Burgeſs of that Town to the then intended Parliament: And where the Statute ſaith, that the Sheriff ſhall ſend his præcept to the Maior, and if there be no Maior, then to the Baſtif, the plaintif declared, that the Sheriff had made his præcept to the Baſtif, without averring that there was no Maior; And after a verdict for the plaintif this was moved in arreſt of Judgement: But the Court was of opinion clearly, that it ſhall be preſumed there was no Maior, except it be ſhewed, and if there were, it ought to be ſhewed on the other part.

191 *Ad ea quæ frequentius accidunt, Jura adaptantur.*

Co. Inſt. part 1. 238. a. 2.

1 It is ſaid, that Abators and Intruders are out of the Statute of 32 H. 8. cap. 33. which gives the diſſeiſee five years to prevent a deſcent, &c. becauſe that Statute is penal, and extends only to a diſſeiſor, who is only named in it; And the reaſon why he only was therein named, and not the Abator or Intruder, was, becauſe diſſeiſin was the moſt common miſchief; Et ad ea quæ frequentius accidunt, &c. Deſcent & Tollency.

Co. ibid. 295. a. 1.

2 In times paſt wager of Law was accounted a good trial in an action of debt without ſpecialty, becauſe the Law preſumed, that no man would forſwear himſelf for any worldly thing; But of later times mens Conſciences are grown ſo large (eſpecially in this caſe paſsing with impunity) that the plaintif now dare not (many times) adventure the debt upon the defendants oath by bringing an action of debt, but rather chuſeth to bring an action upon the caſe upon his promiſe, wherein he cannot wage his Law. Wager of Law

Co. l. 5. 83. b. in the caſe of Market overt. Popham 84. 11.

3 The proper and moſt uſual place for ſelling plate in London or any other Market overt is a Goldſmiths ſhop, becauſe ſuch commodities uſe to be ſold there, and not in a Scrivenors ſhop, or the like; And therefore if ſtoln Plate be ſold in a Scrivenors ſhop (although it be openly, and upon the market day) it ſhall not alter the property, but the party ſhall have reſtitution; It is otherwiſe if it be ſold openly in a Goldſmiths ſhop, &c. Vide Max. 186. pl. 32. & 134. 4. Market overt.

Co. l. 5. 127. b. 1. *Palmers* caſe.

4 Guardian in Knight-ſervice ſhall have the ſingle value of the mariage without tender; And yet the words of the writ de valore maritagii are, Quare cum Maritagium præd. B. ad ipſum A. pertineat, eo quod præd. B. terram ſuam de eo tenuit per ſervitium militare, & idem A. præd. B. dum fuit infra ætatem, &c. compotens maritagium abſque diſparagatione, &c. ſæpius obtulerit, &c. But the reaſon thereof is, for that writs are moſt commonly framed according to that which both moſt uſually fall out, alwayes (in this caſe) ſuppoſing, that a tender is made, becauſe for the moſt part it ſo happens to be; And therefore whereas the Rule is, Ad ea quæ frequentius accidunt, Iura adaptantur, it may in like manner be ſaid, Ad ea quæ frequentius accidunt, reſcripta ſive brevia adaptantur; And in other caſes a ſpecial caſe ſhall have an uſual writ, and a ſpecial Count. Valor maritagii.

Co. l. 6. 45. b. 3. in *Higgins* caſe.

5 In 17 E. 3. 24. In debt upon an obligation of 20 l. Judgement was obtained before the Maior of Newcaſtle, and execution had thereupon, and becauſe the obligation was not cancelled (which after judgment had was the uſual courſe in thoſe dayes) the plaintif had judgement in another action upon the ſame obligation, and the defendant upon pleading the firſt Judgement could not be relieved, becauſe it was imputed to his folly, that he did not procure the obligation to be cancelled upon the firſt Judgement which was the ordinary uſage Obligation not to be cancelled after Judgement.

of

of the Judges at and about that time, because men in antient time after a judgement obtained were apt to be quiet, and to rest contented therewith, without bringing writs of Error, or Attaints, which then were very rare, especially writs of Error: But now of later time men growing more contentious, and not satisfied with any trial or judgement, but being apt upon every such trial or judgement to bring a writ of Error or Attaint, the Judges have thought it dangerous to order the deed to be cancelled, either where the plaintif recovers, or where he is barred by judgement; for in both cases the judgement may be reversed by Error or Attaint: And therefore the reason or cause of the Judgement in 17 E. 3. being now changed, there is now no question, but at this day judgement and execution upon an obligation is a good barr in a new action thereupon, albeit the obligation be not cancelled.

Statute of wills.

6 If there be Grandfather, Father, and divers Sons, and the Grandfather in the life of the Father convey his lands to any of the Sons, this is out of the Statute of 32 H. 8. 1. of Wills; for the words of the Statute are, for the advancement of his wife, preferment of his children, &c. and therefore because the Fathers children are none of the Grandfathers children, such a conveyance is out of that Statute; But the makers of that Act framed it according to that which was most vulgar and usual, and that was for the father to dispose to his children, and Ad ea quæ frequentius accidunt, &c. Co. l. 6. 77. a. 2. in Sir *Geo. Cursons* case.

Presentation.

7 If a man present to an Advowson, and after the Parson resigns, or is deposed, and the Patron presents again, and is disturbed, he shall have an Assise of Darrein presentment, and the form of the writ shall be, Quis Advocatus tempore pacis præsentavit ultimam personam, quæ mortua est ad ecclesiam, &c. Albeit he resigned, and is in full life: Also the form of the writ is to suppose that the defendant did deforce him out of the Advowson, and yet by his Count he shall declare, that he or his ancestor presented last to the Advowson, by which he supposeth, that he is in possession of the Advowson, and yet this good; for ad ea quæ frequentius accidunt, &c. F.N.B. 31. h.

Nomination.

8 If a man hath the nomination to an Advowson, and another hath the presentation, if he name his Clerk, and he that ought to present, present another Clerk, he that had the nomination shall have a Quare impedit, and the writ shall be, Quod permittat ipsum præsentare, &c. And in his Count he shall declare the special matter, and the writ, notwithstanding such variance from the Count, shall be good: so F.N.B. 33. b. c.

Donative.

if a man have a Chantery, which is a donative by his Letters patents, and not presentative, and he gives it to a Clerk, who is disturbed by another, and that other presents to this Chantery, or gives it by his Letters Patents, he that hath right, shall have a Quare Impedit of this donative, and the writ shall be, Quod permittat ipsum præsentare, &c. ad Cantariam, &c. And yet it is not presentative but donative: Howbeit in the Count he shall shew the special matter.

Collation.

9 If a Bishop be disturbed to present, where he ought to make Collation, the writ shall be, Quod permittat ipsum præsentare, &c. So likewise if the King be disturbed to make Collation by his Letters Patents to his Free Chapel, he shall have a Quare Impedit, and the writ shall be, Quod permittat ipsum præsentare, &c. ad præbendam in sua libera Capella, &c. F.N.B. ibid. d. e.

Quare Impedit without alleging a presentment.

10 Regularly, a man shall not have a Quare Impedit, unless he may allege a presentment in himself, or in his ancestor, or in some other person, by whom he claims the Advowson, and that in his Count; And yet at this day if a man by the Kings license make a Church parochial, which shall be presentable, &c. if he be disturbed to present un- F.N.B. ibid. h. i. k.

to it, he ſhall have no other writ for the recovery thereof, than a Quare Impedit, and that without alleging any preſentment in any perſon; for that writ being the moſt uſual writ for the recovery of Advowſons, ſhall not be altered for any ſuch ſpecial caſe: ſo if a man recover an Advowſon by writ of right againſt another, when the Church is void, he ſhall preſent, and, if he be diſturbed, ſhall have a Quare Impedit, and alloge preſentment in him, againſt whom he recovers, without alleging any other preſentment: In like manner if an Abbot hath been Parſon ſomeſoever time out of mind, &c. and afterwards the Abbey is diſſolved, &c. Here, he of whom the Advowſon was held, ſhall preſent, and if he be diſturbed, ſhall have a Quare Impedit without alleging any preſentment in the Count, &c.

11 If an Advowſon becomes void by ſix moneths; at ſuch time as the King is ſeiſed of the Temporalties of the Biſhoprick, there the King ſhall preſent to this Advowſon, as the Biſhop ſhould have done, and if diſturbed, ſhall have a Quare impedit, &c. The King likewiſe ſhall have a Quare Impedit of the Archdeaconry of York, which voideth when the Temporalties of the Archbiſhoprick are in the Kings hands, and the writ ſhall be, Quod permittat eum preſentare, &c. And yet the King may give the Archdeaconry by his Letters Patents. Vacation.

F.N.B.38.a. 12 Albeit the Biſhop himſelf be party and diſturber, yet the form of the writ of Ne Admittas alters not for that, but remains the ſame, as in other caſes, viz. Prohibemus vos ne admittatis, &c. Howbeit the form of the writ in ſuch caſe might more properly be, Prohibemus vos, ne conferatis Clericum eccleſiæ, &c. quæ vacat, &c. becauſe the Biſhop is properly ſaid to Collate, when he preſents in his own right. Collation.

F.N.B. 60.d. 13 If a man make a Leaſe for one year, or for half a year, if the leſſee commit waſte, the Leſſor ſhall have a writ of waſte, and the writ ſhall ſay, Quas tenet ad terminum annorum; becauſe the writ was ordained for leaſes, which were moſt vulgar and uſual, viz. for leaſes for years: Howbeit, he ſhall in his Count ſhew the ſpecial matter: ſo a writ of waſte is maintainable upon a leaſe made to a man, until he ſhall promote himſelf to a benefice, and the writ ſhall ſuppoſe, quod tenet ad terminum vitæ: It is ſo likewiſe of a Leaſe made to endure from ſuch a feaſt to ſuch a feaſt; and in ſuch caſe the writ ſhall ſuppoſe, quod tenet ad terminum annorum, &c. but the Count ſhall declare the ſpecial matter, as aforeſaid. Leaſe.

Ibidem, n.

F.N.B. 86. k. 14 If one man impriſon another, the form of the writ of treſpaſs is, Oſtenſ. quare vi et armis in ipſum A. apud N. inſultum fecit, et ipſum vulneravit, imprioſonavit, male tractavit, & alia, &c. and it is not material whether he wounded him or not, for the form of the writ is ſo, comprehending all that in ſuch caſe may happen, and therefore is the ſame in all caſes of Impriſonment, without alteration. Impriſonment.

F. N. B. 118. f. 15 If a man hath a writ of account againſt a Bailiff, upon a receipt made by him by the hands of his Commoigne, yet the writ ſhall ſuppoſe that he himſelf received it, and ſhall not ſay, by the hands of the Commoigne; ſo likewiſe a receipt made by the baron by the hands of his ſeme is his own receipt, and both the writ and the Count ſhall ſuppoſe, that he himſelf received it, without ſaying by the hands of the ſeme; The writ alſo ſhall be the ſame, when the money is received by the hands of a ſtranger; Howbeit, in this caſe the Count ſhall declare the ſpecial matter, viz. that he received it by the hands of a ſtranger, &c. but in all theſe caſes and the like, the writ ſhall be general and remain the ſame, viz. de tempore quo fuit receptor denariorum, without ſaying by the hands of any, becauſe a Receiver for the moſt part receives the money by himſelf, &c. Receipt of monies.

16 Before

Warrantia Chartæ.

16 Before the statute of Quia Emptores terrarum in 18 E. 1. a man might grant land to hold of himself, which was then the most usual course, yet then also the feoffor (if he so pleased) might grant it to hold of the Lord paramount, which did not so often happen; and therefore the writ of warrantia chartæ (used at this day,) seems to be the same that was used before that statute, which always supposeth, that the plaintif in that writ holds of the defendant, because that did most often happen, for the form is, Rex, &c. præcipe A. quod juste, &c. warrantizet B. unum Messuagium cum pertinentiis in D. quod tenet ut de eo tenere clamat, &c. yet it is not material whether he hold of him or no: So likewise if the plaintif hold by homage ancestrel of the defendant any land, and is impleaded, and hath no charter thereof, yet he shall have this writ de warrantia chartæ against the defendant, and the writ shall say, unde cartam habet, &c. and yet he hath not any Charter to shew, but only holds by homage ancestrel, which implies a warranty; nevertheless because for the most part a warranty is contained in a Charter, the writ retains the same form, and in such cases the words, unde chartam habet, &c. are not material. F.N.B. e. f.

Eschear.

17 If a man be condemned to be hanged for felony, and happen to die after such judgement, and before execution thereof by the officer, yet the writ of Eschear shall say, pro quo suspensus fuit, &c. and it is not material whether he be hanged or no; but the writ retains that form, because for the most part after such judgement the felon is hanged. F.N.B. 144. b.

192 *Frequentia Actus multum operatur.*

Fine. Non-claim.

1 A. possessed of divers lands in D. for years, at will, and by Copy, and seised of other lands there in fee, demises the whole to B. for life, and then levies a fine to B. &c. of so many acres as amount to the whole land, continues possession, and pays the rents to the Lord; five years pass, yet is not the Lord barred by his non-claim; because in as much as the lessee had lands in fee simple in the same Town, the fine shall be presumed to be levied of such lands there, whereof it is lawfull to levy a fine; and then as for the quantity, albeit the fine contains more acres, than his own fee simple lands, that can prove nothing to pass the Lease or Copy land; because it is the common use and practice almost in all fines to insert more acres therein, than the lands intended to be passed by such fines do contain. Co. l. 3. 79. b. 2. in *Fermors* case.

Corporation.

2 Albeit a Corporation have a Commencement by Charter, and (by consequence) within memory, and it be expressed in their charter, that the choice of their Maior, Bailifs, and other principal officers shall be by the Commonalty, yet if by a continual usage they have chosen them by a certain select number of the principal of the Commonalty, or of the Burgesses, albeit no constitution can be shewed to warrant such election, yet such election is adjudged good in Law, because it hath been so often put in execution. Vide supra 189. 25. Co. l. 4. 77. b. in the case of Corporations.

Duchy of Cornwall.

3 Ed. 3. gave unto the Black Prince the Dukedom of Cornwall, &c. habendum et tenendum eidem duci, & ipsius & hæredum suorum Regum Angliæ filiis primogenitis, et dicti loci ducibus in regno Angliæ hæreditarie successuris, &c. This grant was adjudged fee simple, and not at will, as some would have had it; And one of the reasons was, because divers Acts both of E. 3. and the Black Prince himself did confirm the same to be fee simple, and not any inferiour estate: for E. 3. in the 14. year of his reign, when he was to make war against Philip de Valois King of France, (which was but 3. years after the said Charter) Co. l. 8. 21. b. 1. in the Princes case.

ter) grants to the Prince, by the name of Edward Duke of Cornwall, to be Lieutenant of the Realm ſo long as the King ſhould be beyond ſea: Then in 21 E. 3. the Prince for a fine of 1000 marks demiſeth the Stanneries to Redman, rendring 3000 marks rent per annum. And divers other Letters Patents were cited in the Princes caſe in the 8. Rep. to the like purpoſe, all which did confirm the ſaid eſtate of the Prince to be fee ſimple: For frequentia actus multum adjuvat. Vide ſupra 71, 4. Alſo another reaſon to prove the title of the Prince to the Dutchy of Cornwall was, that ever ſince the creation thereof (which was in the 11 of Ed. 3.) in the ſucceſſion of divers ages it hath been enjoyed according to the ſaid Charter by the eldeſt ſon of the Kings of England, &c. for which ſee the book at large.

193 It alwayes conſtrueth things to the Beſt; And therefore

Co. Inſt. part 1. 87. b. 3. Guardian Infant under 14.

1 If a man be ſeiſed of a rent charge, rent ſeck, common of paſture, or ſuch like Inheritances, which do not lie in tenure, and dieth, his heir within the age of 14 years; In this caſe, the heir may chooſe his Guardian; but if he be of ſuch tender years, as he can make no choice, then (if the father hath made no diſpoſition of the cuſtody of the child) the Law adjudged it moſt fit, that the next of kin, to whom the Inheritance cannot deſcend, ſhould have the cuſtody of him; and whoſoever taketh the rent, &c. the heir ſhall charge him in an accompt.

Co. ibid. 98. a. 3. Frankalmoigne. Socage.

2 Where an Abbot (holding in Frankalmoigne) together with his Covent, aliens the land to a Secular man, he cannot hold as they held, viz. in Frankalmoigne; yet becauſe (of neceſſity) he muſt hold the land of ſome perſon, and by ſome ſervice, the Law (in this caſe) creates and appoints him the loweſt and eaſieſt tenure that is, viz. to hold the land of the Lord in ſocage by fealty only, which is incident to every tenure; ſo likewiſe if the Seignior be transferred to a ſtranger by act in Law, and thereby the privity is altered; In ſuch caſe alſo the tenure in Frankalmoigne is changed to a tenure in ſocage by fealty: And therefore if there be Lord, Mean, and Tenant, and the Tenant is an Abbot, who holds of the Mean in Frankalmoigne; here if the Mean die without heir, ſo as the Eſcheat eſcheats to the Lord Paramount, the Abbot ſhall hold immediately of the Lord Paramount by fealty only, becauſe he cannot hold of him in Frankalmoigne: 148, 35.

Co. ibid. 146. b. 3 Intire Inheritances.

3 If a Villein deſcend to two Coparceners, this is an intire inheritance, albeit the Villein himſelf cannot be divided, the Law hath ordained, that the profit of him ſhall be divided; for one Coparcener may have the ſervice one day, one week, &c. and the other another day or week, &c. And for the ſame reaſon it is, that a woman ſhall be endowed of a Villein, viz. to have him every third day, week, or, &c. Likewiſe, if an Advowſon deſcend to Coparceners, the Law hath ſo ordered it, that they ſhall preſent by turns. Et ſic de ſimilibus: In all which caſes the Law hath contrived and eſtabliſhed the beſt way and order that may be, for the parting of Intire inheritances, which are otherwiſe in their nature indiviſible.

Co. ibid. 214. a. 2. Jointenants. Tenant for life. Reverſioner.

4 If two joyntenants, the one for life, and the other in fee, joyn in a Leaſe for life, or a gift in tail, reſerving a rent; In this caſe the rent ſhall inure to them both; for if the particular eſtate determine, they ſhall be joyntenants again in poſſeſſion; But if tenant for life and he in the reverſion joyn in a Leaſe for life, or a gift in tail by deed, reſerving a rent, this ſhall enure to the tenant for life only, during his life

life, and after to him in the reverſion; for each of them grants that which he may lawfully grant, and if (at the Common Law) they had made a feoffment in fee generally, the feoffee ſhould have holden of the tenant for life during his life, and after of him in reverſion: And ſo it was holden Mich. 36 & 37 Eliz. in B. R.

Releaſe. 5 If a man make a leaſe to A. for term of the life of B. and after releaſe to A. all his right in the land; by this A. hath an eſtate for the term of his own life; for a leaſe for term of his own life is higher and better in judgement of Law, than an eſtate for the term of another mans life: So if a releaſe be made to tenant by Statute Marchant or Staple, or tenant by Elegit, or to Guardian in Chivalry, who holdeth in for the value of the marriage, by him in reverſion of all his right in the land, by this a freehold paſſeth for the life of him, to whom the releaſe is made; for that is the beſt and greateſt eſtate, that can paſs without apt words of Inheritance, viz. heirs. Co. Inſt. part 1. 273. b. 1. & 3.

Accruer. 6 Queen Eliz. being ſeiſed of a Reverſion in fee upon an eſtate tail in the Lord Stafford, grants it to Tindal in tail, upon condition to have prædictam reverſionem in fee; Here, theſe words prædictam reverſionem ſhall not be conſtrued to extend to the eſtate tail granted before to Tindal, but to the reverſion in fee. Co. l. 8 77. a. 2. in the Lo. Staffords caſe.

Feoffments. 7 The heir of the diſſeiſor being in by deſcent, the diſſeiſee and he jointly enfeoff another in fee by deed, and livery of ſeiſin is had thereupon: In this caſe as to the heir, the land paſſeth, and the deed enures by way of feoffment, and as to the diſſeiſee, by way of Confirmation; for (by conſtruction of Law) the land ſhall ever paſs from him, that hath the eſtate of the land in him; as if Ceſtuy que uſe and his feoffees after the ſtatute of 1 R. 3. 1. and before the Stat. of 27 H. 8. 10. had joyned in a feoffment, it had been the feoffment of the feoffees, becauſe the eſtate of the land was in them: So it is likewiſe, if the tenant for life, and he in the remainder or reverſion in fee joyn in a feoffment by deed, the livery of the freehold ſhall move from the leſſee, & the inheritance from him in the reverſion or remainder, from each of them according to his eſtate; for it cannot be adjudged by Law, that the feoffment of tenant for life doth draw the reverſion or remainder out of the leſſor or him in remainder, or doth work a wrong, becauſe they joyned together: So if there be tenant for life, the remainder in tail, the remainder in tail, &c. and tenant for life and he in the firſt remainder in tail levy a fine, this is no diſcontinuance or defeaſting of any eſtate in remainder, but each of them paſs that which they have power and Authority to paſs. Co. Inſt. part 1. 302. b. 1. Littl. §. 534.

The like. 8 If the diſſeiſor and diſſeiſee joyn in a charter of feoffment, and enter into the land and make livery, it ſhall be accounted the feoffment of the diſſeiſee, and the confirmation of the diſſeiſor, becauſe the entry of the diſſeiſee was then lawfull; It is otherwiſe, when the heir of the diſſeiſor and the diſſeiſee join (as in Littletons caſe, ſupra 7.) for in ſuch caſe the diſſeiſees entry is not congeable: But if he in the reverſion in fee and tenant for life join in a feoffment by parol, this ſhall be (as ſome hold) firſt a ſurrender of the eſtate of tenant for life, and then the feoffment of him in the reverſion; for otherwiſe if the whole ſhould paſs from the leſſee, then he in the reverſion might enter for the forfeiture, and every mans act (ut res magis valeat, &c.) ſhall be conſtrued moſt ſtrongly againſt himſelf. Co. ibid. 302. b. 4.

9 Words are always taken beſt for the Speaker; ſo as there is one Rule for deeds or pleading, and another for words. Hob. 77. Adrian Coote.

194 Every Act to be lawfull, when it ſtandeth indifferent, whether it ſhould be lawfull, or not.

Co. Inſt. part 1. 42. a. 4. 1 A. tenant in fee ſimple makes a leaſe of lands to B. to have and to hold to B. for term of life, without mentioning for whoſe life it ſhall be; This ſhall be deemed for term of the life of the leſſee, becauſe (in this caſe) it ſhall be taken moſt ſtrongly againſt the leſſor, an eſtate for a mans own life being (as to him) better and higher, than for the life of another: But if tenant in tail make ſuch a leaſe without expreſsing for whoſe life, this ſhall be taken but for the life of the leſſor, for two reaſons; Firſt, when the conſtruction of any act is left to the Law, the Law, which abhorreth injury and wrong, will never ſo conſtrue it, that it may work a wrong; And in this caſe, if by conſtruction it ſhould be for the life of the leſſee, then ſhould the eſtate tail be diſcontinued, and a new reverſion gained by wrong: but if it conſtrued for the life of the tenant in tail, then no wrong is wrought: And it is a general Rule, that whenſoever the words of a deed, or of the parties without deed may have a double intendment, and the one ſtandeth with Law and right, and the other is wrongfull, and againſt Law, the intendment that ſtandeth with Law, ſhall be taken. 2. The Law reſpecteth more a leſſer eſtate by right, than a larger eſtate by wrong; as if tenant for life in remainder diſſeiſe the tenant for life in poſſeſsion; in this caſe the diſſeiſor hath a fee-ſimple; but if tenant for life in poſſeſsion die, now is the diſſeiſors wrongful eſtate in fee (by Judgement of Law) changed to a rightfull eſtate for life: So if tenant in tail makes a leaſe to another for term of life generally, and after releaſeth to the leſſee and his heirs; Here, albeit between the tenant in tail, and the releaſee a fee-ſimple paſſed, yet after the death of the leſſee, the entry of the iſſue in tail is lawfull, which could not be, if it were a leaſe for the life of the leſſee, for then by the releaſe it had been a diſcontinuance executed: In like manner, if I retain a ſervant generally without expreſsing any time, the Law ſhall conſtrue it to be for one year, becauſe that retainer is according to Law. Vide Stat. 5 Eliz. cap. 4. Eſtates for life.

Co. Inſt. part 1. 55. b. 3. 2 If leſſor at will without the conſent of the leſſee enter into the land and cut down a tree (where the trees are not exempted) this is an implyed determination of the will, for that it would otherwiſe be a wrong in the leſſor to do it: So if a man leaſe a Manor at will, whereunto a Common is appendant, and the leſſor puts in his beaſts to uſe the Common, this is alſo a determination of the will, for otherwiſe he ſhould be a treſpaſſor. Leaſe at will.

Co. ibid. 78. b. 2. 3 By common intendment a will ſhall not be ſuppoſed to be made by colluſion; for In facto, quod ſe habet ad bonum & malum, magis de bono quam de malo lex intendit. A Will.

Co. ibid. 119. a. 3. Litt. §. 179. 4 If there be tenant for life of land, the reverſion in fee, & a Villein purchaſe the reverſion, and the tenant for life attorns; In this caſe, the Lord may juſtifie to enter upon the Land and claim the reverſion, and yet ſhall be no treſpaſſor to the tenant for life; for the Law will make conſtruction that he entred to make his claim, and not to commit treſpaſs: The like Law is alſo of a reverſion after an eſtate in tail, Statute Merchant or Staple, Elegit, and for years, and of the reverſion of a Seigniory, rent, common, and any other freehold or inheritance, iſſuing out of any lands or tenements of another. Villein.

Co. ibid. 170. b. 4. If Partition be made by the two Barons in the life-time of their femes coverteners, albeit ſuch partition be unequal, yet it is not void, but Partition.

but voidable, for it shall be deemed good and lawfull, until it be defeated by the entry of either of the semes, if she happen to survive her husband: There is the like Law of an Infant copercener, for it remains good, if he defeat it not at his full age. Co. ibid. 171 a. 4.

Feoffment upon condition. 6 If a feoffment be made by deed poll upon condition, and the feoffor haps the deed poll, and afterwards the condition is broken, whereupon the feoffor re-enters; In this case, having the deed en poigne, albeit it doth not properly appertain to him, but to the feoffee, yet he may make use of the deed, and thereby plead the condition in justification of his entry and title; for it will be rather intended, that he came to the deed by lawfull, than by tortious means: So if there be two joynt trespassors, and the party trespassed releaseth to one of them; In this case also, if the other trespassor be sued, and have the release en poigne, he may plead it in discharge of the trespas, causa qua supra. Littl. §. 376. Co. ibid. 232.

Joint trespass. Littl. §. 377.

Bastard. 7 If the husband be within the 4. seas, viz. within the Jurisdiction of the King of England, if the wife hath issue, no proof is to be admitted to prove the Child a Bastard; for the question being, whether he is legitimate or no, the Law will rather deem him legitimate, than Proles spurius, a bastard: And in this case Filiatio non potest probari. Co. ibid. 244. a. 2.

The like. 8 If a man hath issue two daughters, the eldest being a Bastard, and they entir and enjoy the land peaceably together; Here, the Law, in favour of legitimation, will not adjudge the whole possession in the Mulier, (who indeed hath the only right) but in both, so as if the Bastard hath issue and dieth, her issue shall inherit: And in the same case, if both daughters enter and make partition, this partition shall bind the Mulier for ever. Co. ibid. 244. a. 4.

The like. 9 If the Bastard invite the Mulier to see his house, and to see pictures, &c. or to dine with him, or to hawk, hunt, or sport with him, or such like, upon the land descended, and the Mulier cometh upon the land accordingly, this is no interruption, because he came in by the consent of the Bastard, and therefore the Law will not adjudge the coming upon the land in such case to be any trespass; but if the Mulier cometh upon the ground upon his own head, and cutteth down a tree, or diggeth the soil, or take any profit, these shall be interruptions; For rather than the Bastard shall punish him in an action of trespas, the act shall amount in Law to an entry, because he hath a right of Entry: so it is if the Mulier put any of his Cattel into the ground, or commandmother to do it, these do amount to an entry; for albeit in these cases the Mulier doth not use any express words of Entry, yet these, and such like acts do (without any words) amount in Law to an Entry, for acts without words may make an Entry, but words without an act, (viz. Entry into the land, &c.) cannot make an Entry. Vide infra 28. Co. ibid. 245. a. 2.

Miscontinuance. 10 If one process be awarded instead of another, or a day is given which is not legal, this is a miscontinuance of the sute, and if the tenant or defendant make default, it is good cause of Error, but if he appear, then is the Miscontinuance salved; for albeit (in truth) his appearance is not legal, yet when he appears, the Law shall construe it to be lawfull, because there is a sute depending against him in Court. Co. ibid. 328. a. 4.

Discontinuance of estates 11 If there be tenant for life, the remainder in tail, and he in the remainder grants it to another in fee by deed, and the tenant for life attorns, this is no discontinuance of the remainder in tail; So it is likewise of a rent charge, Advowson in gross, Common in gross, or the like: for the Rule is, that a grant by deed of such things as do lie in Co. ibid. 332 a. 4.

in grant, and not in livery of ſeiſin, do work no diſcontinuance; and the reaſon is, becauſe the Law makes conſtruction, that of ſuch things the grant of tenant in tail worketh no wrong, either to the iſſue in tail, or to him in reverſion or remainder; for (in ſuch caſe) the Law adjudged nothing to paſs from the tenant in tail, but that which he may lawfully grant, viz. an eſtate for his own life.

Co. ibid. 335. a. 2. 12 If tenant for life make a leaſe for his own life to the leſſor, the remainder to the leſſor and a ſtranger in fée: In this caſe for as much as the limitation ſhould work a wrong, by conſtruction of Law it rather inureth to the leſſor as a ſurrender for the one moiety, and a forfeiture as to the remainder of the ſtranger; for he cannot give to the leſſor that which he had before, and as to the remainder to the ſtranger, it is a forfeiture for his moiety, and when the leſſor entreth, he ſhall take benefit thereof. Surrender. Forfeiture.

Co. Inſt. part 1. 381. b. 1. 13 The words of an Act of Parliament muſt be alwaies taken in a lawfull and rightfull ſence, as in the Statute of Gloceſter cap. 3. The words in the end of that Act (whereof no fine is levied in the Kings Court) are to be underſtood, whereof no fine is lawfully or rightfully levied in the Kings Court: And therefore a fine levied by the husband alone of the wives land, is not within the meaning of that Statute; for that fine would work a wrong to the wife; but a fine levied by the husband and wife is intended by the Statute, for ſuch a fine is lawfull and worketh no wrong: So the Statute of Weſtm. 2. cap. 5. ſaith (Ita quod Epiſcopus Eccleſiam conferat) is conſtrued, Ita quod Epiſcopus Eccleſiam legitime conferat, and the like in a number of other caſes in our books: And the general rule is, Non præſtat impedimentum, quod de Iure non ſortitur effectum. Stat. of Glo.

Co. ibid. 42. a. 1. 14 If tenant for life infeoff him in the remainder for life, this the Law conſtrues to be a ſurrender, which is a lawfull act, and not a forfeiture, which implies a wrong. Surrender.

Co. ibid. 15 If tenant for life maketh a leaſe by déed or without déed, to him in the remainder or reverſion, in tail or in fée, for the term of the life of him in remainder or reverſion, and after he in remainder taketh wife and dieth; In this caſe, his wife ſhall not be endowed; for the Law will adjudge the eſtate made to him in remainder or reverſion, a good and lawfull eſtate, and tenant for life ſhall enjoy the land again: And here, in regard this can be no ſurrender, becauſe tenant for life did not part with his whole eſtate, the Law (rather than to admit of a forfeiture, which implies a wrong) preſerves the firſt eſtate for life from being ſurrendred, drowned or forfeited: And (indéed) forfeited it cannot be in another reſpect, for that he in remainder was party thereunto. Leaſe for life to him in remainder.

Co. l. 1. 76 a. *Bredons* caſe. 16 If there be tenant for life, remainder in tail, remainder in tail, and tenant for life, and the firſt remainder levy a fine to one, who grants and renders a rent charge to the tenant for life, and then the firſt remainder dies without iſſue, and the ſecond remainder enters, and tenant for life diſtrains for the rent: In this caſe, there is neither diſcontinuance nor forfeiture: no diſcontinuance, becauſe each of them grants but his own eſtate, which he may lawfully do: no forfeiture, becauſe it ſhall be firſt conſtrued to be the fine of him in remainder, and afterwards of the tenant for life. No diſcontinuance or forfeiture.

Co. l. 2. 67. a. 1 in *Tockers* caſe. 17 Dower aſsigned by one Jointenant only, or by an Abator or diſſeiſor, ſhall not be avoided by the other Jointenant or the diſſeiſée, as it is agréed in 12 Aſſ pl. 20. becauſe theſe are lawfull acts: ſo it is ſaid, if the diſſeiſor attorn or give ſeiſin to the grantée of a ſeignior, this ſhall bind the diſſeiſee for the ſame reaſon: albeit the grantee of a ſeignior cannot compell the diſſeiſor to attorn to him, or to give him ſeiſin, Aſſignment of Dower. Attornment.

ſin, if he had not ſeiſin before within the time of limitation. Vide 8 H. 6. 17. 8 Aſſ. pl. 16. 8 E. 3. 52. 11 H. 4. 29. 39 H. 6. 2. It is likewiſe ſaid, that if the leſſor diſſeiſe his two leſſees for life, and enfeoffe another, and one of the leſſees re-enter, this act of the one is an attornment in Law for both; much more ſhall an expreſs attornment bind both, becauſe theſe are (by conſtruction of Law) lawfull acts, &c. Vide 23.

Fine and 5. years paſs. 18 T. poſſeſſed of divers parcels of land within the Manor of S. for years, at will, and by Copy, and of others in fee there, demiſes the whole to C. for life, then levies a fine to him and his heirs of ſo many acres as amount to the whole land, continues poſſeſſion, and pays the rents to the Lord: Here, albeit 5. years paſs, yet is not the Lord barred: for in as much as the leſſee had lands in fee ſimple in the ſame Town, by conſtruction of Law it will be preſumed, that the fine was levied of the land, whereof a fine might be lawfully levied; And albeit the fine contained more acres than his own land, yet that alters not the caſe, for it is uſual (almoſt) in all fines to put in more acres, than the juſt content of the land. Co. l. 3. 79. b. 2. *Fermers* caſe.

Copyhold. 19 If a man ſeiſed of Copyhold land in right of his wife ſurrender it to the uſe of another in fee, who is admitted accordingly, the baron dies, this is no diſcontinuance to the feme or her heirs, but that the feme may well enter, neither ſhall ſhe be put to her Cui in vita, or her heir to his ſur Cui in vita: becauſe the Law will conſtrue it to be ſuch an alienation as he may lawfully make, viz. of his eſtate in right of his wife during the Coverture: So if a Copyholder for life ſurrender to the uſe of another in fee, this is no forfeiture for the like reaſon; and becauſe it paſſeth by ſurrender to the Lord, and not by livery. Co. l. 4. 23. a. 2. in Copihold caſes, *Bullock* and *Dibley*.

King tenant *pur auter vie*. 20 If the King being tenant pur auter vie, make a leaſe for 40. years; albeit he (having but an eſtate pur auter vie) cannot abſolutely contract for a leaſe of 40. years, yet without any recital or mention of the eſtate for life, the leaſe is good; becauſe the leaſe for years is (in judgement of Law) leſs than the eſtate pur auter vie, and the King doth not thereby any wrong or prejudice to any, neither yet is he deceived in his grant; for (by conſtruction of Law) it is a leaſe for 40 years, if Ceſtuy que vie ſo long live. Co. l. 5. 11. a 4. in *Engleſields* caſe.

Afferment of Amerciaments. 21 If a Jury or a Leet tax an amerciament, this ſufficeth without any afferment, for the afferment may as well be per totum Homagium, as by ſpecial Afferrors, becauſe the amerciament is the act of the Court, and the Afferment the act of the Jury. Vide 10 Edw. 3. 9. & 10. 8 Hen. 7. 4. 7 Edw. 3. 15. b. Aſtlies caſe. 25 Edw. 3. 26, & 27. Co. l. 8 40. b. 4. in *Grieſlyes* caſe.

Grant of the King. 22 The King grants the herbage and pannage of a Park to Markham for life, and reciting that eſtate, grants to the E. of Rutland for life: In this caſe, albeit the King grants to the Earl in poſſeſſion, yet he is not deceived in his grant; for reciting and granting, as here, it enures (as it may by Law) to a grant of the reverſion, &c. Co. l. 8. 56. a. 1. The E. of *Rutl.* caſe.

Attornment. 23 Albeit an Infant be not compellable to attorn, unleſs the grant be by fine in a per quæ ſervitia, yet upon the grant of a ſeignory without fine, if he attorn, that ſhall bind him, and he ſhall not have his age: ſo likewiſe attornment by him upon the grant of a reverſion is good, albeit he cannot be forced thereunto. Vide ſupra 17. Co. l. 9. 85. b. 3 *Cinys* caſe.

Covin. 24 Covin ſhall never be intended or preſumed in Law, except it be expreſly averred, quia odioſa & inhoneſta non ſunt in lege præſumenda, & in facto, quod ſe habet ad bonum & malum, magis de bono quam de malo præſumendum eſt. And ſo it was adjudged in the caſe of Meriel Littleton, Trin. 10 Jac. in B. R. Quod vide ubi ſupra. Co. l. 10. 56. a. 3. in the Chan. of *Oxf.* caſe.

Co. l. 10. 67. b. 3. in the Churchwardens caſe.

25 When two Conſtructions may be made of the Kings grant, and by force of the one the grant may according to the Rule of Law be adjudged good, and by the other it may be alſo taken by the Law to be void; In ſuch caſe, for the honor of the King, and the benefit of the Subject ſuch conſtruction ſhall be made, that the Kings Charter may take effect: as it was reſolved in the caſe of the Churchwardens of Saint Saviours in Southwark, Co. l. 10. 67. b. 3. and in Sir John Molins caſe, Co. l 6. 5. See alſo Priddle and Nappers caſe, Co. l. 11. 11. a 4 The E. of Rutlands caſe ſupra 22. The L. Staffords caſe, Co. l. 8. 77. The Lord Chandos caſe, Co. l. 6. 55. The E. of Cumberlands caſe, Co. l. 8. 168. &. 12 E. 4. 44. The Kings Charter.

F. N. B. 148. f.

26 If the heir within age endow the feme of more land than ſhe ought to have aſſigned in Dower, or if the Guardian endow the feme of more than a third part of the land, the heir at his full age ſhall have a writ of Admeaſurement of Dower againſt the feme; Howbeit in ſuch caſe ſhe ſhall retain ſo much of the land ſo aſſigned as amounts to her Dower, becauſe it was a lawfull act, only the ſurpluſage ſhall be taken from her, what ſhe had above ſuch third part aſſigned unto her. Dower aſſigned.

Pl. Co. 18. b. r. in *Culthr.* and *Bevish.* caſe.

27 In an Aſſiſe, if the tenant plead in barr deſcent to the plaintif, and two others, and that he hath the eſtate of one of them; In this caſe, the plea is good, and yet it may be, that he had his eſtate by diſſeiſin, in which caſe he is alſo a diſſeiſor to the plaintif, for he cannot be a diſſeiſor to one, and not to the other, or he may gain his eſtate lawfully, and ſo a doubt ariſeth, whether the tenant is in lawfully, or by wrong: Howbeit in this caſe it ſhall be taken, that he had his eſtate lawfully, and not tortiouſly or by wrong, and therefore ſuch plea in barr is good. Vid 189, 40. Plea in bar.

Pl. Co. 93. a. 4. The Aſſiſe of Freſh force in *London.*

28 In the Aſſiſe of Freſh force by Pannel againſt Moore and the Corporation of Mercers in London, Moores invitation of the plaintif to dine with him and to ſee the Cellar, &c. was adjudged no entry by the plaintif after the laſt continuance, becauſe it was rather to be eſteemed a lawfull than a tortious act, being by the conſent of Moore one of the defendants. Vide ſupra 9. Aſſiſe of Freſh force.

Dyer 57. b. 1. 35 H. 8.

29 Ceſtuy que uſe for term of life the remainder over in tail, after the Statute of 1 R. 3. 1. makes a leaſe for the term of the life of the leſſee, and dies, and the leſſee continues his eſtate; In this caſe the leſſee is but tenant by ſufferance; for the leaſe makes no diſcontinuance of the Remainder, becauſe he had authority by the ſaid Statute to make a leaſe, grant, or feoffment, and that ought to be underſtood, of ſuch an eſtate as he may lawfully make. *Ceſtuy que uſe* for life.

Dyer 150. b. 85. 3, 4. P. M.

30 By the Statute of 32 H. 8. 1. that giveth power to deviſe two parts of a mans land holden in Knight ſervice, a deviſe of the whole had been good for two parts, albeit the Statute of explanations (34 & 35 H 8. 5.) had not been made. Deviſe of lands.

Dyer 286. 43 11 Eliz.

31 In an Ejectione firmæ the plaintif declares of a leaſe made unto him the 8. day of May, to have and hold for 21 years extunc proximè ſequent. Virtute cujus poſtea, viz. eodem 8 day of May he entred: This ſeems to be good, and that he entred not as a diſſeiſor before the leaſe commenced; for extunc is immediately after the delivery, and ſhall not be intended the morrow after the date, and the word poſtea declares, that he entred not before the leaſe was made: Tamen Quære, for the practice is otherwiſe at this day, making the term to commence at ſome feaſt or day before the day of delivery, to prevent the ſaid exception. *Ejectione firmæ.*

Dyer 359 3. a. E.

34 A. Tenant of Prince Arthur as Earl of Cheſter, in Knight ſervice in Capite dies, and B. his eldeſt ſon is in ward, B. dies without iſſue, and upon a Devenerunt C. was found brother and heir to B. and Wardſhip.

within

within age, C. at full age purſues livery by writ to the Eſcheator per nom'n B. filius & hæres A. And now the queſtion was whether or no the poſſeſſion ſtill continued in Qu. Eliz.? And it was adjudged, that it did not, but that it was a good livery; for if he had not been named heir to any, it had been good, becauſe conſtat de perſona.

Tenants in Common.

35 If a tenant in Common enter into the land generally, without expreſſing whether it be for himſelf alone, or both for himſelf and his companion; yet it ſhall be taken according to right, as under conſtruction of Law, and therefore conſtrued lawfull, and not that he intended to ouſt his companion of his part by tort. Hob. 120. *Smales* and *Dale*.

195 *Non præſtat impedimentum, quod de Jure non ſortitur effectum.* Vide 195, 13.

Baſtard eigne & Mulier Puiſne.

1 If the Baſtard eigne after the deceaſe of the father enter, and the King ſeiſeth the land for ſome contempt ſuppoſed to be committed by the Baſtard, for which no freehold or inheritance is loſt, but only the profits of the land by way of ſeiſure, and the Baſtard die, and his iſſue is upon his petition reſtored to the poſſeſſion; In this caſe, for that the ſeiſure was without juſt cauſe, the Mulier is barred for ever; for the poſſeſſion of the King, when he hath no juſt cauſe of ſeiſure, ſhall be adjudged the poſſeſſion of him, for whoſe cauſe he ſeiſed: But if after the death of the Father the Mulier be found heir, and within age, and the King ſeiſeth; In ſuch caſe the poſſeſſion of the King is in right of the Mulier, and veſteth the actual poſſeſſion in the Mulier, and conſequently the Baſtard eigne is forclofed of any right for ever: ſo it is likewiſe when the King ſeiſeth for a contempt, or other offence of the father, or of any other anceſtor; In that caſe, if the iſſue of the Baſtard eigne upon a Petition be reſtored, for that the ſeiſure was without juſt cauſe, the Mulier is not barred; becauſe the baſtard could never enter, and conſequently could gain no eſtate in the land; but the poſſeſſion of the King in that caſe ſhall be adjudged in the right of the Mulier. Vide 2 Aſſ. pl. 9. Co. Inſt. part 1. 245. b. 2.

Copyhold.

2 If a Copihold eſtate fall into the Lords hands by eſcheat, forfeiture, or the like, and the Lord make a leaſe thereof for years, life, or other eſtate by deed or without deed, or if the Lord make a feoffment thereof in fee upon condition, and enter for the condition broken, or if the Copyhold ſo forfeited or eſcheated, before any new grant thereof made, be extended upon a Statute or Recogniſance acknowledged by the Lord, or if the feme of the Lord in a writ of Dower hath that land aſſigned to her; In all theſe caſes, and albeit theſe laſt impediments are by acts in Law, yet for as much as all theſe interruptions are lawful, the lands can never after be granted by Copy; becauſe after ſuch diſpoſition thereof it was not demiſed or demiſable: But if the interruption be tortious, as if the Lord be diſſeiſed, and the diſſeiſor die ſeiſed, or if the land be recovered againſt the Lord by a falſe verdict, or erronious judgement: In theſe caſes, until the land be recovered, or the judgement nulled or reverſed by the Lord or the Manor, the land was not demiſed or demiſable, and yet after the land is recontinued, it is again grantable by Copy, becauſe the interruption was tortious, for Non valet Impedimentum, quod de jure non ſortitur effectum, & quod contra legem fit pro infecto habetur. Co. l. 4. 31. a. 2. in *Frenches* caſe.

Reſtraint to alien.

3 If a man make a gift in tail, upon condition that the donee ſhall not alien; yet in ſuch caſe if the donee ſuffer a Common recovery, that is no breach of the Condition, becauſe it is a Conveyance allowed by Law in reſpect of the intended recompence; but if he make a feoffment Co. l. 6. 41. b. 2. in Sir *Anthony Mildmayes* caſe.

feoffment in fee or any other eſtate, whereby the reverſion is fortifiouſly diſcontinued, the donor may enter for the Condition broken; for every act, which is prohibited by Law, or is a tort, may be prohibited by condition, vide 10 H. 7. 11. So if a feoffment be made to Baron and feme, upon condition that they ſhall not alien, yet that doth not reſtrain their joint alienation by fine, becauſe it is lawfull and incident to their eſtate: But their feoffment, or alienation by deed is reſtrained by ſuch a condition, for that is tortious, and againſt Law: Alſo if a man enfeoff an Infant in fee, upon condition that he ſhall not alien, this cannot reſtrain him to alien at his full age; but during his minority it doth, becauſe that is tortious, and prohibited by Law.

Co. l. 7. 6 a. 3. in *Sendals* caſe. 4 One of the reaſons, why the robbing of an houſe either in the day or in the night is not within the Statute of Wincheſter for the Hundred to ſatisfie the damages, is, for that it is not lawfull for any man to enter into the houſe of another for the ſafeguard thereof. Robbery.

Co. l. 11. 74. a. 3. *Magd.* Coll. caſe. 5 Albeit the Friers Carmelites were of a Profeſſion of Religion, and had not any habitation, ſo as it ſeemed to be a work of piety and charity to provide an habitation for them, yet non facias malum, ut inde fiat bonum. Carmelites.

F. N. B 36. f. 6 If a man be diſſeiſed of a Manor, to which an Advowſon is appendant, and the diſſeiſor ſuffers an uſurpation by a ſtranger to the advowſon, and after the diſſeiſée re-enters into the Manor, he ſhall preſent to the advowſon, when it happens to be void, notwithſtanding ſuch uſurpation. Uſurpation.

Dyer 168. 19. 1 Eliz. 7 Bronker Sheriff of Wiltſhire, to prevent perjury in his office, did neglect to be ſworn in incepto officii, which he ought to have done by the antient Common Law of the Realm, for which contempt he was fined and impriſoned by decree in the Star-chamber. Sheriffs oath.

Dyer 219. 10. 5 Eliz. 8 A man is bound to deliver the key of an houſe, and quiet poſſeſſion, to the Mayor of London to the uſe of the obligee; no perſon being in the houſe he locks the door, and delivers the key to the Mayor out of view; A ſtranger pretending title, enters into the houſe; This ſeems to be no delivery of poſſeſſion, yet verdict was given for it, which was afterwards affirmed in Attaint; And the reaſon ſeems to be, for that the impediment was unlawfull. Livery of ſeiſin.

196. Prætextu liciti non debet admitti illicitum.

Co. l. 11. 88. b. 1 in the caſe of Monopolies. 1 The Charter of making and importing Cards (being adjudged in the 11 Rep. a Monopoly) had a glorious preamble and pretext; yet was repealed as derogatory to the Kings honor, and very pernicious to the Commonwealth; And indeed it is true, Quod privilegia, quæ revera ſunt in præjudicium Reipublicæ, magis ſpecioſa habent frontiſpicia, et boni publici prætextum, quam bonæ et legales conceſſiones; but Prætextu liciti non debet admitti illicitum. Monopolies.

Dyer 35 6. 33. 29 H. 8. 2 If a leſſée hath liberty to fell trées to repair the houſe, and he fells 4. Oaks for that purpoſe, and ſells them, and buyes 4. other Oaks as good, and imployes them towards the repair of the houſe, yet that is waſte; for the cutting of them down and ſelling them was a tort: ſo if a man ſell the diſtreſs, which he hath taken and impounded, and afterwards (finding his error) buyes them again and impounds, yet their ſale is a tort, and the impounding of the Cattel afterwards ſhall not excuſe it. Waſte.

Dyer 36. b. 38. 29 H. 8. 3 If the leſſor be bound to a man in 100 l. and the leſſée cuts down 20 Oaks, ſells them, and payes the obligée for the leſſor; yet an action Waſte.

on of waſte lyeth againſt the leſſee for felling the trees, albeit the money ariſing upon the ſale was converted to the uſe and profit of the leſſor; for albeit a thing may ſometimes ſound for the profit of a man and not for his damage, yet it is not lawful for a man to do a wrong; As if a man ſee his neighbours beaſts in another mans ſoil Damage feaſant, it is not lawfull for him to chaſe them, and if he ſo do, the owner ſhall have an action of treſpaſs againſt him, yet in ſo doing he doth a good work, and ſaves the owner from the damages for depaſturing his cattel.

Damage feaſant.

Treſpaſs. 4 Jn 21 H. 7. A Parſon brings an action of treſpaſs for his Grain carried away, the defendant ſaith, that the Grain was ſevered from the 9. parts, and in danger to be ſpoiled with Cattel, whereupon the defendant carried them to the plaintifs own barn, and there lodged them; And yet this was adjudged no good plea, becauſe the carrying of them away was a tort: So if a Commoner make a trench in the ſoil, where he hath Common, where by the ſoil is made better, yet he is a treſpaſſor, and ſubject to an action for it. Dyer ibid. pl. 39.

5 Hob. 12. Holder againſt Tayler, and 220. Wrenham's caſe, who was cenſured in the Star chamber 1000 l. for publiſhing a ſcandalous book againſt a decree of the Lo. Ch. Bacons.

197 The Law favoureth things for the Common-wealth.

Incapable Officers. 1 If an Office either of the grant of the King or Subject, which concerns the adminiſtration, proceeding, or execution of Juſtice, or the Kings revenue, or the Commonwealth, or the intereſt, benefit or ſafety of the Subject, or the like; If theſe or any of them be granted to a man that is unexpert, and hath no skill or ſcience to exerciſe or execute the ſame, the grant is meerly void, and the party diſabled by Law, and incapable to take the ſame, pro commodo Regis & populi, for only men of skill, knowledge, and ability to exerciſe the ſame are capable thereof to ſerve the King and his people: So an Infant or Minor is not capable of an office of Stewardſhip of the Court of a Manor either in poſſeſsion or reverſion: Neither yet is a man, though never ſo skilfull and expert, capable of a judicial office in reverſion, but muſt expect until it fall in poſſeſsion: Likewiſe bargaining, or giving of money, or any manner of reward, &c. for offices, ſhall make ſuch a purchaſor incapable thereof; becauſe it is to be preſumed he will by bribery, extortion, and other undue means make his ſtake good again, to the prejudice of the Commonwealth; which learning is worthy to be known, but more worthy to be put in due execution. Co. Inſt. pars 1. 3. b. 2.

Dower Caſtles. 2 Of a Caſtle, that is only maintained for the private uſe and habitation of the owner, a woman ſhall be endowed; But of a Caſtle, that is maintained for the neceſſary defence of the Realm, a woman ſhall not be endowed: And ſo it was adjudged in the Court of Common Pleas, where in a writ of Dower the demand was, De tertia parte Caſtri de Hilderker in Comitatu Northumb. And the Statute of Magna Charta, cap. 7. whereby it is provided, Niſi domus illa ſit Caſtrum, is to be underſtood of a Caſtle for the neceſſary and publique defence of the Realm: And this agreeth alſo with antient Records, the effect whereof is, Non debent mulieribus aſsignari in dotem Caſtra, quæ fuerunt virorum ſuorum, et quæ in Guerra exiſtunt, vel etiam homagia & ſervitia aliquorum in Guerra exiſtentia: And ſo are the old books to be intended, as it was reſolved Trin. 17 Eliz. in the Court of Common Pleas. Vide infra 35. Co. ibid. 31. b. 3.

Co. ibid. 39. a. 4. Littl. §. 48.

5 If a man ſeiſed of 40 acres of land, (20 holden by knight ſervice, and the other 20 in ſocage) die thereof ſeiſed (his heir being under the age of 14 years) his ſeme ſhall be endowed de la plus beale out of the ſocage land, and not out of the knight ſervice land; for the Common Law giveth this priviledge to the land holden by knight ſervice, that it ſhall not be diſmembred, but in ſuch caſe the whole dower ſhall be taken out of the Land holden in ſocage; And the reaſon is, for that knight ſervice land is for the defence of the Realm, which is pro bono publico, and therefore to be favoured. Dower de la plus beale.

Co. ibid. 47. a. 4.

4 Things ſhall not be diſtrained for rent, which are for the benefit and maintenance of trades, and (by conſequent) of the Commonwealth, and are there by authority of Law, as a horſe in a Smiths ſhop ſhall not be diſtrained for rent ſitting out of the ſhop, nor the horſe &c. in the Hoſtry, nor the materials in a Weavers ſhop for making of cloth, nor cloth or garments in a Taylors ſhop, nor ſacks of Corn or meal in a Mill or Market, nor any thing diſtrained before for damage feſant, for it is in the cuſtody of the Law, and the like. Diſtreſs.

Co. ib'd. 55. a. 4.

5 If Tenant at will ſow the ground with grain, hemp, flax, or the like, or ſet roots, or ſow or ſet any other thing which will yield an annual profit, and after the ſame is ſo planted, the leſſor will out him, or if the leſſee dieth, yet he or his executors ſhall have that years crop; And the reaſon is, for that the eſtate of the leſſor is uncertain, and therefore leſt the ground ſhould be unmanured, which would be hurtfull to the Commonwealth, he ſhall reap the Crop which he hath ſowed in peace, albeit the leſſor doth determine his will before it be ripe: There is the ſame reaſon alſo for every other particular eſtate, that is uncertain; And therefore if tenant for life ſow the ground, and dieth, his executors ſhall have the Corn, for that his eſtate was uncertain, and determined by the act of God; And there is the ſame Law of a leſſee for years of the tenant for life: So likewiſe if a man be ſeiſed of land in right of his wife, and ſoweth the ground and dieth, his executors ſhall have the Corn, and if his wife die before him, he himſelf ſhall have it. If tenant pur terme dauter vie ſow the land, and Ceſtuy que uſe dieth, the leſſee ſhall have the corn. If tenant by Statute marchant ſoweth the ground, and then a ſudden and caſual profit falleth, by which he is ſatisfied, he ſhall have the emblements. If a man ſeiſed in fee hath iſſue a daughter and dieth, his wife being enſeint with a ſon, and the daughter ſoweth the land, and then the ſon is born, yet the daughter ſhall have the Corn, becauſe her eſtate was lawful, and defeated by the act of God, and it is good for the Commonwealth that the ground be ſown: But if husband and wife be jointenants of the land, and the husband ſoweth the ground, and the land ſurviveth to the wife, It is ſaid that ſhe ſhall have the Corn and not the executors, and the Law ſeems to be ſo, becauſe they were as one perſon in Law, and held by intiertes. Tenant at will ſhall reap his crop.

8 Aſſ. pl. 21. 8 E. 3. 54. Dyer 316.

Co. ibid. 75. b. 4.

6 The tenure by knight ſervice being at firſt ordained for the defence of the Commonwealth both againſt domeſtique inſurrections and forrein invaſions (a Militia being indeed the chief pillar that ſupports a Commonwealth) the due obſervance thereof was ſtrictly enjoyned by the Laws of Edward the Confeſſor, where you ſhall find it thus provided, Debent enim univerſi liberi homines, &c. ſecundum feodum ſuum, & ſecundum tenements ſua, arma habere, & illa ſemper prompta conſervare ad tuitionem regni, & ſervitium dominorum ſuorum, juxta præceptum Domini Regis explendum et peragendum. And William the Conqueror confirmed that Law in theſe words, Statuimus et firmiter præcipimus, quod omnes Comites, & Barones, & Milites, et Servientes, & univerſi liberi homines totius regni noſtri prædicti habeant & teneant Knight ſervice.

Lamb. 135.

ſe

se semper in armis, et in equis, ut decet, et oportet, et quod sint semper prompti & parati ad servitium suum integrum nobis exhibendum & peragendum, cum semper opus adfuerit, secundum quod nobis debent de feodis et tenementis suis de jure facere, &c.

The like. 7 The tenure by Knight service (because it was instituted for the Guard and defence of the Commonwealth) was so much favoured in Law, that betwixt the making of the Statutes of 4 H. 7. 17. and 27 H. 8. 10. of Uses, there might lie two wardships for one and the same land, as if Cestuy que use before the Statute of 27 H. 8. had died, his heir within age, the Lord should have had the wardship of his heir by force of the Statute of 4 H. 7. and if the feoffee had died, his heir within age, the Lord should have had the wardship of his heir also, viz. by the course of the Common Law; And at the Common Law before the making of those Statutes there might be two wardships in respect of the same land, as if tenant by Knight service had made a gift in tail, the remainder in fee, and tenant in tail had made a feoffment in fee, and died, his heir within age, the Lord should have had the wardship of him, and if the feoffee had died, his heir within age, the Lord should have also had the wardship of his heir, and of the land: so likewise if tenant by Knight service make a gift in tail, and the donee maketh a feoffment in fee, and the donee dieth, his heir within age, the donor shall have the wardship of him, because he is his tenant in right: but if the feoffee dieth, his heir within age, the Lord paramount shall have the wardship of his heir, because en fait he is tenant to him, &c. And the Common Law did not remedy this inconvenience, because that tenure was deemed serviceable for the Commonwealth. Co. ibid. 76. b. 4. Co. ibid. 77. a. 1.

Tillage. 8 Agriculture or Tillage is much favoured, and of great esteem, because it is very profitable for the Commonwealth, concerning which the goodness of the habit is best known by the privation: For by laying of lands, used in tilth, to pasture, six main inconveniences doe daily encrease: 1. Idleness, which is the beginning and ground of all mischiefs: 2. Depopulation and decay of Towns: 3. Husbandry, which is one of the greatest Commodities of the Realm, is decayed: 4. Churches are destroyed, and the service of God neglected by diminution of Church-livings, (as by decay of Tithes, &c.) 5. Injury and wrong is done to Patrons and Gods Ministers: And 6. The defence of the land against forein Enemies is enfeebled and impaired, the bodies of Husbandmen being more strong and able, and patient of cold, heat, and hunger, than of any other: from which Inconveniences necessarily follow these consequences; 1. The displeasure of Almighty God: 2. The subversion of the Policy and good government of the Realm; And all this appeareth in our books: And therefore the Common Law giveth arable land (antiently called Hyde or Gaine) the precedence before Pleasons, Pastures, Woods, Vines, or any other ground whatsoever; And averia carucæ (the beasts of the Plough) have in some cases more privileges than other cattel, &c. This imployment was also of high estimation amongst the antient Romans, in so much that the grave Senators themselves would put their hand to the plough, &c. If the Lord will distrain averia carucæ, where there is a sufficient distress besides, the tenant may make replevin. Co. l. 4. 39. a. in Tirringhams case. Co. Inst. part 1. 161. a. 1.

O Fortunatos nimium, sua si bona norint,
Agricolas, quibus ipsa, procul discordibus armis,
Fundit humo facilem victum justissima Tellus.

Virg. in Georg.

Co. ibid. 99. a. 2.

9 An Abbot or Prior, &c. who holdeth lands by Knight ſervice, albeit he ought not, in reſpect of his profeſsion, to ſerve in war in proper perſon, yet muſt he find a ſufficient man, conveniently arrayed for the warr, to ſupply his place; And if he can find none, then muſt he pay Eſcuage, &c. for his poſſeſsion doth not privilege him, but that the Kings ſervice in his warrs muſt be done, which belongeth to his tenure, and concerneth both the honor and ſafety of the Commonwealth. Abbot. Prior.

Co. ibid. 127. a. 4. Bract. l. b. 6. fo. 6.

10 The life and members of every ſubject are under the ſafeguard and protection of the King; for (as Bracton ſaith) Vita et membra ſunt in poteſtate Regis; And herewith agreeth a notable Record, Paſch. 19 E. 1. coram Rege, Rot. 36. Norfolk. Vita & membra ſunt in manu Regis, to the end that they may ſerve the King and the Commonwealth, when occaſion ſhall be offered: And therefore if the Lord mayhem his Villein, the King ſhall puniſh him for mayheming his ſubject, by fine, ranſom, and impriſonment, until the fine and ranſom be paid, becauſe he hath thereby diſabled him to do the King and Commonwealth ſervice. Life and Member. Villein.

Co. ibid. 130. a. 4.

11 The Protections Quia Profecturus (which concerns ſervices of warr, as the Kings ſouldier, &c.) and Quia Moraturus (which concerns wiſdom and counſel, as the Kings Ambaſſador or Meſſenger pro negotiis regni) being for the publique good of the Realm, private mens actions and ſuits muſt be then ſuſpended for a convenient time; for Jura publica anteferenda privatis, and again, Jura publica ex privatis promiſcue decidi non debent: And the cauſe of granting ſuch protections muſt be therein expreſſed, to the end it may appear to the Court, that they are granted pro negotiis regni, et pro bono publico: And theſe protections are not allowable only for men of full age, but for men within age, and for women, as neceſſary attendants upon the Camp, and that in three caſes, Quia Lotrix, ſeu Nutrix, ſeu Obſtetrix. Protections.

Co. ibid. 131. b. 2.

12 Treaſure is one of the chiefeſt ſupports of a Commonwealth; And therefore the King (who is the Head of the Commonwealth) is regularly (by his prerogative) to be preferred in payment of his duty or debt by his debtor before any ſubject, albeit the Kings debt or duty be the later; upon which ground it is, that the King may grant his debtor a protection cum clauſula volumus, to protect him from the ſuits and actions of other Creditors: And the reaſon hereof is, for that Theſaurus Regis eſt fundamentum belli & firmamentum pacis: But this Law is ſomewhat altered by the Statute of 25 E. 3. cap. 19. quod vide. Protection.

Co. ibid. 132. b. 3.

If a Monk be a farmer of the King, yielding a rent, he ſhall have an action concerning that farm, becauſe the Kings revenue is alſo the revenue of the Commonwealth. Monk.

Co. ibid. 133. a. 4.

13 By the Common Law the wife of the King of England is an exempt perſon from the King, and is capable of lands or tenements of the gift of the King, as no other feme covert is, and is of ability and capacity (without the King) to grant and to take, to ſue and be ſued, as a feme ſole at the Common Law; for the wiſdom of the Law would not have the King (whoſe continual care and ſtudy is for the publique, & circa ardua regni) to be troubled and diſquieted with ſuch private and petty cauſes. Queen.

Co. ibid. 149. a. 2. & Co. ibid. 149. b. 2.

14 If the tenant holdeth by fealty and a buſhel of wheat, or a pound of Cumin, or pepper, or the like, and the Lord purchaſeth part of the land, there ſhall be an apportionment, as well as if the rent were in money: yet if the rent were by one grain of wheat, one ſeed of Cumin, one pepper Corn, a horſe, or any other intire ſervice, by purchaſe of part, the whole ſhould be extinct: Howbeit if ſuch an intire ſervice be Service. Tenant.

be pro bono publico, as Knight ſervice, Caſtle-guard, Coynage, &c. for the defence of the Realm, or to repair a bridge or way, to keep a Beacon, or to keep the Kings Records; or for advancement of Juſtice and peace; as to aid the Sheriff, or to be Conſtable of England, albeit the Lord purchaſeth part, yet the intire ſervice remains. See Bruertons caſe, Co. l. 6. 1. b. 4. & Jo. Talbots, l. 8. 105. b. 4.

Authority. 15 If a man make a Letter of Attorney to two, to do any act, if one of them die, the ſurvivor ſhall not do it: but if a Venire facias be awarded to four Coroners, to impannel and return a Jury, and one of them die, yet the other ſhall execute and return the ſame; becauſe it is for the execution of Juſtice, and (by conſequent) pro bono publico: ſo if a charter of feoffment be made, and a Letter of Attorney to four or three ſeverally to deliver ſeiſin, two of them cannot make livery, becauſe it is neither by them four or three ſeverally, nor by any of them ſeverally: But if the Sheriff upon a Capias directed to him, make a warrant to four or three ſeverally to arreſt the defendant, two of them may arreſt him for the reaſon aforeſaid, and for the ſame reaſon ſuch an act ſhall be more favourably expounded, than a private one; for lura publica ex privato promiſcua decidi non debent. Co. ibid. 181 b. 3.

Tenants in Common and Joyntenants. 16 If there be two tenants in Common of a Manor, to which Leet and ſtray doth belong, a ſtray happens, they are tenants in Common thereof; And yet if one of them take the ſtray, the other hath no remedy by action, but to take it again; unleſs they have a preſcription to take ſtrayes by turns: Howbeit if there be two tenants in Common of a Dove-houſe, and the one wholly deſtroyes the flight, or of a folding, and one diſturbs the other to erect hurdles; In theſe caſes an action of treſpaſs lyeth againſt the other, becauſe they are offences committed in prejudice of the Commonwealth. If two ſeveral owners of houſes have a River in common between them, and the one corrupts the River, the other ſhall have an action upon his caſe againſt his companion: So if there be two tenants in Common or Jointenants of an houſe or Mill, and it fall into decay, and the one is willing to repair it, and the other will not, he that is willing ſhall have a writ de reparatione facienda, and the writ ſaith, Ad reparationem et ſuſtentationem ejuſdem domus teneantur, whereby it appeareth, that owners are in ſuch caſe bound pro bono publico to maintain houſes and mills, which are for the habitation and uſe of men. Co. ibid. 100. a. 3. &c.

Offices. 17 Non-uſer of it ſelf without ſome ſpecial damage is no forfeiture of Private offices, as the Keepership of Park or the like: But Non-uſer of Publique offices, which concern the adminiſtration of Juſtice, or the Commonwealth, is of it ſelf a cauſe of forfeiture. Co. ibid. 233. a. 4.

Repair by the leſſee. 18 In many caſes a tenant for life or years may fell down timber to make reparations, albeit he be not compellable thereunto, and ſhall not be puniſhed for the ſame in any action of waſte: As if an houſe be ruinous at the time of the leaſe made, if the leſſee ſuffer the houſe to fall down, he is not puniſhable, for he is not bound by Law to repair the houſe in that caſe; and yet if he cut down timber upon the ground ſo letten, and repair it, he may well juſtifie it; And the reaſon is, for that the Law doth favour the ſupportation and maintenance of houſes which were ordained for the habitation of Mankind, and are (by conſequent) beneficial to the Commonwealth: And therefore if the leſſor by his Covenant undertake to repair the houſe, yet the leſſee (if the leſſor doth it not) may with the timber growing upon the ground repair it, though he be not compellable thereunto: In like manner if a man make a leaſe of an houſe and land without impeachment of waſte for the houſe, yet may the leſſee with the timber upon the ground re- Co. ibid. 54. b. 2.

pair the houſe, though he may utterly waſte it if he will; and ſo it is in many other caſes for the reaſon above alleged.

Co. l. 4. 14 b. 1. *Cutler* and *Dixons* caſe. 19 If a man exhibit articles to Juſtices of Peace againſt another, containing divers great abuſes and miſdemeanors, to the intent to have him bound to the good behaviour; In this caſe, the party accuſed ſhall not have for any matter contained in ſuch Articles any action upon the caſe: becauſe he hath purſued the ordinary courſe of Juſtice in ſuch caſe provided: And if actions ſhall be permitted in ſuch caſes, they who have juſt cauſe to complain would not dare to make ſuch complaint, for fear of infinite veration. So if a man has exhibited a Bill in the ſtar-chamber againſt another, containing divers ſcandalous accuſations, albeit they were falſe, yet no action upon the caſe would lie for them, if they were examinable in that Court; becauſe the proceeding was in a Courſe of Juſtice, whereunto the Law giveth favour, becauſe it tends to the good of the Commonwealth. See Dyer 11 Eliz. 285. pl. 37. Slander.

Co. ibid. Sir *Rich. Buckleys* caſe.

Co. l. 4. 37. a. 2. in *Tringhams* caſe. 20 In antient time when a Lord enfeoffed another of arable land, to hold of him in ſocage, viz. per ſervitium Socæ, the feoffee ad manucendum ſervitium Socæ had Common in the waſte of the Lord for his neceſſary Cattel, that gained and compaſſed the land; not only becauſe that liberty was tacite implyed in the feoffment, (for he could not plow and compaſs the land without cattel, and they could not live without paſture to ſuſtain them) but ſuch Common appendant was principally given him for the maintenance & advancement of tillage, which is much regarded and favoured in Law, becauſe it is one of the chiefeſt ſupports of the Commonwealth; ſo as ſuch Common appennant is of Common right, and began by operation of Law, and in favour of tillage, and therefore needs not preſcription (as it was held in 4 H. 6. & 22 H. 6.) which it ought to have, if it were againſt common right: Howbeit it is only appendant to the antient arable Hyde and Guine, and only for horſes and oxen to plow the land, and for Cows and ſheep to manure it; And all this for the melioration and advancement of tillage, as aforeſaid: And with this agrees 37 H. 6. 34 per tot. Cur. and 29 H. 8. 4. Tillage.

Co. l. 4. 124 b. 2. in *Beverleys* caſe. 21 No felony or murder can be committed without a felonious intent and purpoſe, Nam ideo dicta eſt felonia, quia fieri debet felleo animo; And therefore a Mad man cannot commit felony, becauſe he cannot have a felonious intent: ſo likewiſe if a feme Non compos mentis kill her husband, it cannot be Petty treaſon; Howbeit in ſome caſes Non compos mentis may commit high treaſon, as if he kill or offer to kill the King, that is high Treaſon; For the King eſt Caput et ſalus Reipublicæ, & a capite bona valetudo tranſit in omnes, and for that cauſe their perſons are ſo ſacred, that no man ought to offer them violence, and if he do, he is Reus criminis Læſæ majeſtatis. *Non compos mentis.*

Co. l. 5. 63. a. 2. in the Chamberlain of *London's* caſe. 23 The Inhabitants of a Town (without any cuſtom) may make Ordinances or By-laws, for the repair of the Church, or of an Highway, or any other ſuch thing, which is generally for the good of the Commonwealth, and in ſuch caſe the greater part ſhall bind all without any cuſtom. Vide 44 E. 3. 19. Alſo Corporations may make Ordinances or Conſtitutions (without cuſtom or the Kings charter) for things which concern the Commonwealth; as reparations of the Church, common High-ways or the like. Vide 8. E. 2. Aſſiſe 413. 21 E. 4. 54. 11 H. 7. 13. 21 H. 7. 20. & 40. By-Laws.

Co. l. 5. 63. a. 4. 23 The Act of the Common Council of London for bringing of Cloth to Blackwell-Hall to be ſearched, and the impoſition of a penny for tallage upon every Cloth, were adjudged lawfull conſtitutions, becauſe Conſtitutio

cause they were beneficial to the Commonwealth, and not for any private profit.

Constitutions.

24 In 37 Eliz. 1595. The Term being appointed to be kept at St. Albons, a Constitution was made there for the assessing of a sum of money for the preparing of Courts and other necessaries for the Term, and every Inhabitant was enjoyned to pay his respective assessment on pain of imprisonment; Clerk an Alderman (who also consented to the assessment) refused to pay his proportion, and thereupon being imprisoned by the Mayor, did bring an Action of false Imprisonment against the Mayor, and had judgement to recover, because the Constitution was against Magna Charta, cap. 29. Nullus liber homo imprisonetur, &c. Howbeit if the Constitution had been upon a pain of a reasonable sum of money, and distress or action of debt for the recovery thereof, the Mayor might have justified the distress or action; because it was pro bono publico, that the Town should make provision for the Term, and the rather, for that E. 6. who did incorporate them had granted them power to make Ordinances: Albeit Corporations within time, &c. cannot have that privilege, but by Parliament, when it is pro commodo private. See Co. l. 8. 127. b. Co. l. 5. 64. a. *Clerks* case.

Penalties of Statutes not transferrable.

25 When a Statute is made by Parliament for the publique good of the Realm, the King cannot give the penalty or benefit thereof to any subject, or give him power to dispence with it, or to make a warrant to the Great Seal for licenses in such case to be made; for when a Statute is made pro bono publico, and the King (as the head of the Commonwealth, and the Fountain of Justice and Mercy) is by all the Realm trusted with it, this confidence and trust is so inseparably annexed to the Royal person of the King in so high a point of Soveraignty, that he cannot transfer it to the disposition or power of any private person, or to any private use; because it is committed to the King by all his Subjects for the Common good, and if he might grant the penalty of one Act, he may also grant the penalty of two, and so in infinitum. Co. l. 7. 36. b. 3. in the cases of Penal Statutes.

Dangerous to have *London* too populous.

26 The Custom in London, that a Forreiner shall not sell by retail, was adjudged good, because it was beneficial not only for the Citizens, but likewise for the whole Commonwealth; for that it would prevent the confluence of people from all parts of the realm to London, which confluence might produce 3. great inconveniences: 1. Impoverishment of all the good Towns in England: 2. Depopulation of Towns in every Country: 3. Destruction in the end of all trades and tradesmen in every part of the Realm; Besides, it might be a means to increase the Pestilence by reason of the multitude of people, and pestering the air, whereby it might prove dangerous not only to the Subject, but likewise to the King himself and the Great Lords who attend upon his royal person: Again, if London should be too populous, it would become ungovernable by the Magistracy of the City, and if that City (which is tanquam Epitome totius regni) should not be well governed, all the parts of the Realm would find the inconvenience thereof, whereas when that City shall be well governed, all parts of the Commonwealth will be preserved in better order: Lastly, that City becoming too populous, it will not be subject to search, &c. not only in prejudice of the City it self, but likewise of the King and the whole Commonwealth, because then fraud and deceit will encrease in all Merchandise and things vendible. Co. l. 8. 127. b. 2. in the case of the City of *London*.

Plea. Accord.

27 Accord with satisfaction is a good plea in an Ejectione firmæ for that is mixt with trespass; and (indeed) in all actions, which suppose a tort to be done (where Capias and Exigent do lie) there an Accord is a good plea, because it redeems the body from imprisonment, so Co. l. 9. 78 a. 3. *Henry Petoes* case.

as

as men (being at liberty) may go about their buſineſs, which is good for the Commonwealth.

Co. l. 10. 108. b. 3. *Loſields* caſe.

28 If there be Lord and Tenant by Knight ſervice, and the tenant gives the tenancy to two men, and to the heirs of their bodies, and they die having iſſue, their iſſue ſhall hold ſeverally by Knight ſervice, becauſe it is for the defence of the Lord, and of the Realm. Vide ſupra 14. Tenure.

Co. l. 11. 54. a. The Tailers of *Ipſwich* caſe.

29 An Ordinance of a Corporation, that none ſhall exerciſe any trade there, unleſs he hath ſerved 7. years as an apprentice in the ſame, and ſhall alſo be approved by them to be skilfull therein, is not good, becauſe againſt the Common Law, which reſtrained no man from exerciſing any trade, and alſo prejudicial to the Commonwealth, for that it puts a greater reſtraint upon Tradeſmen, than the Statute of 5 Eliz. doth ordain, in as much as he ought alſo to be approved by them, which the Statute doth not enjoyn; for if he be ignorant of his trade, an action upon the caſe lyeth for his miſdoing; as it did alſo at the Common Law before the Statute; neither doth the Stat. reſtrain a Taylor or other Artificer retained to exerciſe his trade in a private houſe. And the Statute of the 19 H. 7. ſtrengthens not any Ordinance againſt the Law or the Commonwealth, though allowed, as that Statute ordains; the allowance only diſcharges the penalty of 40 l. for making Ordinances againſt the Kings prerogative and the Commonwealth. Corporate Ordinance.

Co l. 11. 72. a. b. Magd. Coll. caſe.

30 The King is bound by the Statute De donis, though not named, becauſe it is an Act, which concerns the Commonwealth, and was ordained for the preſervation of the poſſeſſions of the Nobility, Gentry, and others; ſo the Statute of 13 Eliz. 10. made for the prevention of long leaſes, and diſpoſitions of Colleges, Cathedrals, Hoſpitals, &c. doth bind the King, albeit not named, becauſe thoſe Corporations were truſted with their poſſeſſions pro bono publico, & for the uſe of the Commonwealth, & for the ſame reaſon that Act hath in all caſes had a beneficial and favourable conſtruction to the prevention of all inventions and evaſions, againſt the true Intention of the ſame Act. Statutes binding the King.

Co. ibid. 76. a. a.

Co. l. 11. 86. a. 3. & b. in the caſe of Monopolies.

31 One of the Cheifeſt reaſons, why the Monopoly of the ſole making and importing of Cards, and all other Monopolies are prohibited by Law, is, for that there are three inſeparable incidents to every Monopoly againſt the Commonwealth: 1. The price of the Commodity will be raiſed, for he who hath the ſole vendition of any commodity, may and will make the price as he pleaſeth: And this word Monopolium is compounded of theſe Greek words, μόνος and πωλεομαι, id eſt, cum unus ſolus aliquod genus mercaturæ univerſum emit, pretium ad ſuum libitum ſtatuens; And the Poet ſaith, Monopolies.

Omnia Caſtor emit, ſic fit ut omnia vendat.

Alſo it appears by the writ of ad quod damnum (F. N. B. 222) that every gift or grant of the King hath this condition, either expreſly or tacitly annexed unto it, Ita quod Patria per donationem iliam magis ſolito non oneretur ſeu gravetur: And therefore every grant made in grievance or prejudice of the Subject is void, (Vide 13 H. 4. 14.) The ſecond Incident to a Monopoly is, that after the Monopoly granted, the Commodity is not made ſo good and merchantable, as it was before; for the Patentée having the ſole trade, regards his private benefit only, and not the Commonwealth. 3. This tends to the impoveriſhment of divers artificers and others, who before by the labour of their hands in their art or trade did ſuſtain themſelves and their families in good condition, and having alſo by that means increaſed their ſubſtance,

substance, were fit and ready to serve the King, when need should require; but by the grant of such a Monopoly they are reduced to such necessity, that ever after they are constrained to live in idleness and beggary, &c.

Munition & Treasure of the King.

32 Munition (though unserviceable) cannot be claimed as fees belonging to the Master of the Ordnance, because they were provided for the defence and safeguard of the King and Commonwealth; and therefore albeit the King grant them to him, and then he dies, yet his executors shall not have them, but shall be accountable to the King for them: And for the same reason it is, that no officer of the King, or all of them together, can ex officio, issue or dispose of the Kings treasure, although it be for the honor and profit of the King himself: for although it be true, that it is for the honor and benefit of the King, that good service done unto him should be rewarded, yet it ought to be rewarded by the King himself, or by his warrant, & no by other; because the treasure of the King (being the ligament of Peace, the preserver of the Honor and Safety of the Realm, and the sinews of Warr, all which do much concern the Commonwealth) is of so high an estimation in Law, in respect of the necessity thereof, that the imbezilling of treasure trove, although it were not in the Kings Chests, was Treason; And treasure and other valuable chattels are so necessary and incident to the Crown for the reasons aforesaid, that in the Kings case they shall go with the Crown to the successor, and not to the executors, as in case of a common person, as appears in 7 H. 4. 43, & 44. Co. l. 11. 91. b. 4. The Earl of *Devons* case.

Escape. Statures extendible by equity.

33 Albeit the Statute of 1 R. 2. 12. be penal, and gives an action of debt only against the Warden of the Fleet, yet is extended by equity against all other persons, who have the Custody of prisoners in execution, because it is good for the Commonwealth; for although it is penal against the Warden, yet being also extended against all others so chargeable with prisoners, it is beneficial to the Commonwealth; And (indeed) every Statute is penal against some man; but in as much as the taking of it by equity is more beneficial than prejudicial to the greater number of men, and so (by consequent) to the Commonwealth, it is good reason, that it should be by the Rules of Law extended by equity: So likewise the Statute of Circumspecte agatis in 13 E. 1. is, viz. Circumspecte agatis de negotiis tangentibus Episcopum Norwicensem & ejus Clerum, and yet it is extended to all other Bishops; Likewise the Statute of 9 E. 3. cap. 5. which ordains, that the executor, who comes in first by distress, shall answer, is extended by equity to Administrators: Also the Statute of Westm. 2. cap. 3. 13 E. 1. which gives a Cui in vita upon a recovery by default, is extended by equity to a Cui ante Divortium; And the Statute of Marlbridge, cap. 6. which makes mention only de hiis qui primogenitos suos infra ætatem existentes feoffare solent, and yet if his first son die, and he enfeoff his second son, who is his heir, this is within the equity of that Statute, or if he levy a fine to him, which is a matter of Record, that is also within the equity of the same Statute, and yet the Statute speaks only of a feoffment: But regularly all Statutes, which are for the advancement of Justice, or beneficial to the Commonwealth, are extendible by equity. Pl. Co. 56. b. *Plats* case. Pl. Co. 59. b. in *Wimbish* and *Talbots* case. Vide Pl. Co. 82. a. the Stat. of 32 H. 8. 9. of pretenced titles extended also by equity.

Torts justifiable.

34 In some cases a man may justifie to do a wrong, which tends to the good of the Commonwealth, as in time of warr a man may justifie to make Bulwarks in another mans soyl without licence; So may he justifie to pull down an house that is on fire, for the safeguard of the neighbouring houses: also if the Sheriff pursue a felon to an house, he may justifie to break open the house door to take him; for all these and the like sound to the good of the Commonwealth. Dyer 36. Pl. 40, 29 H. 8.

Co. Inſt. pars 1. 165. a. 4.

35 If a Caſtle that is uſed for the neceſſary defence of the Realm, deſcend to two or more Coparceners, this Caſtle might be divided by Chambers and Rooms, as other houſes be, but yet for that it is pro bono publico, & pro defenſione Regni, it ſhall not be divided, Propter jus gladii dividi non poteſt (Fleta l. 5. cap. 9.) And another ſaith, (Britton 186, 187.) Pur le droit del eſpee, que ne ſouffree diviſion, en aventure que la force del Realm ne defaille pas tant: But Caſtles of habitation for private uſe, that are not for the neceſſary defence of the Realm, may be parted amongſt Coparceners as well as other houſes, and inches may be thereof alſo endowed, as before hath been ſaid, ſupra 2. Coparceners.

Co. Inſt. pars 1. 14. a.

36 In King Alfreds time Knights fees deſcended to the eldeſt ſon; for that by diviſion of them between Wales the defence of the Realm might be weakned; but in thoſe dayes Socage-fee was divided between the heirs male, and therewith agreeth Glanvile, (lib. 7. cap. 1. & 3. Cum quis hæreditatem habens moriatur, ſi plures reliquerit filios, nunc diſtinguitur, utrum ille fuerit Miles, ſive per feodum militare tenens, aut liber Sockmannus, quis ſi miles fuerit aut per militiam tenens, tunc ſecundum jus regni Angliæ primogenitus filius patri ſuccedit in toto, &c. ſi vero fuerit liber Sockmannus, tunc quidem dividetur hæreditas inter omnes filios, &c. Knight ſervice, Socage.

198 Publique Commerce. Vide ſupra 198, 31.

Co. Inſt. pars 1. 2. b. 2.

1 If an Alien take a leaſe for years of Lands, Meadows, &c. or (being no Merchant) taketh a leaſe for years of an houſe for habitation, upon office found, the King ſhall have them; for albeit he be capable to take ſuch a leaſe, or lands, tenements, or hereditaments to him and his heirs, yet upon office found, the King ſhall have them by his prerogative: Notwithſtanding he being a Merchant, may take a Leaſe for years of an houſe for habitation, as incident to Commercery, for without habitation he cannot merchandiſe or trade; But if he be no Merchant, or being a Merchant depart the Realm, the King ſhall have the Leaſe; or if he die poſſeſſed thereof, neither his executors or adminiſtrators ſhall have it, but the King; for he had it only for habitation, as neceſſary to his trade or traffique, unto which the Common Law giveth much favour. Alien. Trade.

Co. ibid. 129. b. 1.

2 An alien enemy ſhall not maintain any action real, perſonal, or mixt, donec terræ fuerint communes: Notwithſtanding (in favour of trade) an alien in league may maintain perſonal actions; becauſe ſuch an Alien may trade and traffique, buy and ſell; And therefore he muſt of neceſſity be of ability to have perſonal actions, or being condemned in an information, he may have a writ of Error to relieve himſelf: but he cannot have either real or mixt actions. Alien. Actions.

Co. ibid. 172. a. 3.

3 Regularly, a Receiver (upon his accompt) ſhall not be allowed his expences and charges, yet in ſome caſe in an action of accompt againſt one as Receptor denariorum, he ſhall have allowance of his expences and charges, and alſo ſhall accompt for the profit he received, or might reaſonably receive; And this was provided by Law in favour of Merchants, and for advancement of trade and traffique; As if two Joint Merchants occupy their ſtock, goods, and merchandize in common to their common profit, one of them naming himſelf a Merchant, ſhall have an accompt againſt the other, naming him alſo a Merchant, and ſhall charge him as Receptor denariorum ipſius B. ex quacunque cauſa & contractu ad communem utilitatem ipſorum A. & B provenientium, ſicut per legem Mercatoriam rationabiliter monſtrare poterit. Merchants accompt.

4 Sur-

Merchants. 4 Survivorship holdeth not betwixt two Joint-merchants; for the wares, merchandises, debts, or duties, which they have as Joint-merchants, or Parceners, shall not survive, but shall go to the executors of him that deceaseth; And this is per legem Mercatoriam, which is part of the Laws of this Realm, for the advancement and continuance of Commerce and trade, which is pro bono publico; for the Rule is, that Jus accrescendi inter mercatores pro beneficio commercii locum non habet. Co. ibid. 182. a. 2.

Trade. 5 One of the chiefest reasons, why a Condition not to alien, annexed to a feoffment, devise, or gift of lands or goods, is void, is, for that it is flatly against trade and traffique, bargaining and contracting, between man and man. Vide infra 9. Co. ibid. 223. a. 2.

Monopolies. 6 Trin. 44 Eliz. The grant of the sole making of Playing Cards was adjudged void, because it restrained trade and traffique, which are the very life of every Commonwealth, and principally of an Island. There is the same reason of all other Monopolies. Vide Co. l. 11. 87. Co. l. 8. 125. a. 3. the case of *London*.

Guilda. 7 In favour of trade and traffique, the Law giveth the King power by his prerogative to erect Guildam Mercatoriam, viz. a Fraternity, Society, or Incorporation of Merchants, to the end that good order and government may be by them observed, for the increase and advancement of Merchandising and trade, and not for the hindrance and diminution thereof. Co. ibid.

Trade. Idleness. 8 At the Common Law none could be prohibited to work in any lawfull trade, for the Law abhors Idleness the Mother of all mischief, Otium omnium vitiorum mater, and principally in young people, who ought in their youth (which is their seed-time) to learn lawfull sciences and trades, which are for the advancement of traffique, and profitable to the Commonwealth, and thereof they ought to reap the fruit in their old age, For Jeunesse Oisense, Vieillesse discretense: And therefore the Law detests Monopolies, which prohibit the exercise of lawful trades; And this appears in 2 H. 5. b. where a Dyer was bound, that he should not use the Dyers trade by the space of two years, and there Hall held, that the obligation was against the Common Law; and added farther, Per dien si le plaintife fuit icy, il iroit al prison, tanque il seroit fine al Roy. Co. l. 11. 53. b. 4. The Taylors of *Ipswich*

Tail. 9 Before the Statute of 32 H. 8. 36. it seems to be the better opinion, that tenant in tail by a fine might have barred his heir, albeit the reversion were in the King; because the Law always mistrusts restraint of alienation in prejudice of trade and traffique. Vide supra. 5. Dyer 32. 28. & 29 H. 8.

199 Honor and Order.

Tenant by Curtesie. 1 A man shall be tenant by the Curtesie of an house, that is Caput Baroniæ, or Comitatus, because so it may be still preserved intire; but it appeareth by 4 H. 3. that a woman shall not be endowed thereof, because in such case it should be severed, which the Law will not permit, for that the Law respecteth Honor and Order. Vide Title Dower 180. Co. Inst. pars 1. 30. b. 2.

Villein. 2 Amongst the cases where the Villein shall be priviledged from the seisure of the Lord, albeit he be not absolutely enfranchised, this is one, viz. Ratione dignitatis, as if the Villein be made a Knight, the Lord cannot seise him. Vide Britton 79. Co. ibid. 137. b. 3.

Challenge. 3 A Peer of the Realm, or Lord of Parliament (as a Baron, Viscount, Earl, Marquess, or Duke) in respect of Honor and Nobility are Co. ibid. 156. b. 3.

are not to be ſworn on Juries, and if neither party will challenge him, he may challenge himſelf; for by Magna Carta it is provided, Quod nec ſuper eum ibimus, nec ſuper eum mittemus, niſi per legale judicium parium ſuorum, aut per legem terræ: Now in reference to Honor and Order the Common Law hath divided all the Subjects into Lords of Parliament, and into the Commons of the Realm: The Peers of the Realm are divided into Barons, Viſcounts, Earls, Marqueſſes, and Dukes; And the Commons are divided into Knights, Eſquires, Gentlemen, Citizens, Yeomen, and Burgeſſes; and in judgement of Law, any of the ſaid degrees of Nobility are Peers to another: As if an Earl, Marqueſs, or Duke be to be tried for Treaſon or Felony, a Baron, or any other degree of Nobility is his Peer: In like manner a Knight, Eſquire, &c. ſhall be tried per pares, and that is by any of the Commons, as Gentlemen, Citizens, Yeomen, or Burgeſſes, ſo as when any of the Commons is to have a trial, either at the Kings ſute, or between party and party, in ſuch caſe a Peer of the Realm ſhall not be impannelled.

Co. ibid. 165. a. 3.

4 Concerning Inheritances of Honor and Dignity there is an ancient Book-caſe in 23 H. 3. Tit. Partition 18. in theſe words; Note, if the Earldom of Cheſter deſcend to Coparceners, it ſhall be divided between them, as well as other lands, and the eldeſt ſhall not have this Seigniory and Earldom intire to her ſelf; Quod Nota, adjudged per totam Curiam. By this it appeareth, that the Earldom (viz. the poſſeſſions of the Earldom) ſhall be divided, and that where there be more daughters than one, the eldeſt ſhall not have the dignity and power of the Earl, that is, to be a Counteſs; but in ſuch caſe the King, who is the Soveraign of Honor and Dignity, may for the uncertainty confer the Dignity upon which of the daughters he pleaſe: And this hath been the uſage ſince the Conqueſt, as is ſaid (Vide 3 H. 3. tit. Preſcription.) Howbeit if an Earl, that hath his dignity to him and his heirs, dieth, having iſſue one daughter, the dignity ſhall deſcend to the daughter and her poſterity; for there is no incertainty: And this appeareth by many preſidents, and by a late Judgement given in Sampſon Leonards caſe, who maried with Margaret, the only ſiſter and heir of Gregory Fines Lord Dacre of the South, and in the caſe of William Lord Ros. Howbeit, there is a difference between a dignity or name of Nobility, and an office of Honor: for if a man hold a Manor of the King to be Conſtable of England, and die, having iſſue two daughters, and the eldeſt daughter taketh husband, he ſhall execute the office ſolely, and before Partage it ſhall be exerciſed by ſome ſufficient Deputy, and all this was reſolved by all the Judges of England in the Duke of Buckinghams caſe, 11 Eliz. Dyer 285. But the Dignity of the Crown of England was (without all queſtion) deſcendible to the Eldeſt daughter alone, and to her poſterity; and ſo it hath been (25 H. 8. cap. 22.) declared by Act of Parliament: for Regnum non eſt diviſibile, and ſo likewiſe was the deſcent of Troy, as appears by Virg. Æneid. 1. Noble wom Coparceners.

Præterea Sceptrum Ilione, quod geſſerat olim
Maxima natarum Priami ———

Co. l. 1. 24. b. 4. in *Porters caſe.*

5 Judges in their reſolutions ought to have a ſpecial care, that the honor of the Law be not prejudiced nor any way blemiſhed: And therefore in Porters caſe in the 1. Rep. one of the reaſons, why good & charitable uſes ought not to be expounded to be within the Statute of 23 H. 8. cap. 10. was, becauſe it would be diſhonourable to the Law of the Land to make ſuch good uſes void, and to reſtrain well-minded people Good uſes.

ple to give lands to good and charitable uſes; And if that or any other Statute ſhould be made directly againſt the Law of God, as if it ſhould be ordained, that none ſhould give Alms to any, in what neceſſity ſoever they were, or the like, the Judges (in point of Honor to the Law) ought to adjudge ſuch a Statute void. Doct & Stud. lib. 1. cap. 6.

Libel. 6 In a ſetled ſtate of Government, if an injury be offered, the party grieved ought not to revenge himſelf by the odious Courſe of libelling, or otherwiſe; but ought to make complaint thereof to the Magiſtrate in an ordinary Courſe of Law. Co. l. 4. 125. b. 1. In the caſes of Libels

Kings grant. 7 It hath been alwayes the gravity of the antient Sages of the Law to conſtrue the Kings grants beneficially for his Honor, and the relief of the Subject, and not to make any ſtrict or literal conſtruction in ſubverſion thereof: And therefore E. 3. being Lord, an Abbot Meſne, and the Tenant attainted of Treaſon, the King grants to I. M. to be held of us, and other chief Lords of the fee, by the ſervices, &c. In this caſe the Meſnalty was adjudged to be revived; for that the words were ſufficient to create a tenure in the Meſne, as it was before the Treaſon; becauſe that ſeemed to be the Kings intention, and was alſo conſonant to equity, viz. that the Meſne who offended not, ſhould not loſe his ſervices; And therefore in ſuch caſe the grant ſhall be taken beneficially for the Honor of the King, and for the relief of the Meſne; neither yet can the words Tenendum, &c. have any other reaſonable conſtruction. Co. l. 6. 6. a. Sir *John Molins* caſe, & Co. l. 9. 131. a. in *Bewleys* caſe.

Arreſt of Peers. 8 The perſon of one, who is in Law a Counteſs by marriage, or by deſcent, is not to be arreſted for debt or treſpaſs; for albeit (in reſpect of her ſex) ſhe cannot ſit in Parliament, yet is ſhe a Peer of the realm, and ſhall be tried by her Peers, as appears by the Statute of 20 H. 6. 9. which was but a declaration of the Common Law: And there are two reaſons why her perſon ſhall not be arreſted in ſuch caſes: the one, in reſpect of her dignity; and the other in reſpect that the Law preſumes, that ſhe hath ſufficient lands and tenements, in which ſhe may be diſtrained: There is the ſame reaſon for a Lord, that is a Peer of Parliament. Co. l. 6. 52. b. 3. The Counteſs of *Rutl.* caſe.

Oath of Allegeance. 9 To preſerve the Kings Honor and Safety, and good order in the Government of the Commonwealth, the Oath of Allegiance was invented and enjoyned (as it is ſaid in Lamb. 135, 136.) by King Arthur to be taken in Folkmotes, now called Turns and Leets: Hujus legis authoritate expulit Arthurus Rex Saracenos et inimicos a Regno, &c. Et hujus legis authoritate Etheldredus Rex uno et eodem die per univerſum regnum Danos occidit. Co. l. 7. 6. b. 3 in *Calvins* caſe.

Homage. Fealty. 10 Homage and Fealty, were at firſt ordained for the preſervation of order in the Common wealth, and being ſervitces of fidelity do require multiplication; And therefore if a man ſeiſed of two acres, the one, at the Common Law, and the other in Borough Engliſh, and make a gift in tail of both, and the donée having iſſue two ſons dies, both the ſons ſhall make fealty; There is the ſame Law alſo of Homage, whether it be reſerved by the party, or created by the Law: ſo likewiſe if the donor die having two ſons, both the ſons ſhall have homage and fealty. Co. l. 10. 108. b. 2. in *Humfry Loſtields* caſe.

King. 11 In a writ de Cautione admittenda theſe words, De gratia noſtra ſpeciali, are not words of neceſſity, but of form only, for the Honor of the King; for he ought of right to make reſtitution of the goods of the Clerk, before ſeiſed by the Sheriff. F.N.B. 66. a.

Fines in Courts. 12 For the better preſerving of order in the Commonwealth, if any contempt or diſturbance be committed in any Court of record, the Law giveth the Judge or Judges thereof power to impoſe upon the offenders a reaſonable fine; And this holds not only for the Superi- Co. l. 8 38. b. 3. in *Grieſlyes* caſe.

our Courts at Westm. but likewise for all inferiour Courts, which are of Record; And therefore in a Leet (being a Court of Record, and the Steward Judge there) if any contempt or disturbance to the Court be committed before the Steward there, he may impose a reasonable fine upon the offendors.; as if the Bailiff there refuse to execute his office, the Steward may assess upon him a reasonable fine; and with this agrees 7 H. 6. 12. b. So if a Citizen refuse to make presentment in a Leet, the Steward may impose a reasonable fine upon him, as it was held 10 H. 6. fo. 7. Also if one of the Jury in a Leet depart without giving up his verdict, he shall be fined by the Steward, as appears in the book of Entries, fol. 149. Et sic de similibus.

Dyer 307. b. 27. 13 When a Peer of the Realm is party to a suit, there ought to be one Knight at least impannelled of the Jury, otherwise it is a good Challenge for the Peer. Challenge.

200 Publique quiet.

Co. Inst. pars 1. f. 2. 3. 1 No Subject can build a Castle or house of Strength imbattelled, &c. or other fortress defensible, without the Kings license, for the danger which might ensue in disturbance of the peace and quiet of the Realm, if every one at his pleasure might do the like. Fortresses.

Co. ibid. 72. a. 4. 2 Albeit Escuage incertain was due by tenure, yet because the assessment concerned so many and so great a number of the Subjects of the Realm, lest it might disturb the publique quiet thereof, it could not be assessed by the King, or any other, but by the Parliament only. Escuage.

Co. ibid. 130. b. 3. 3 Britton treating of an Essoin beyond the Grecian Sea (amongst other things) saith thus, Nul grand Seigneur ne Chivalier de nostre Realm ne doit prender chemin sans nostre conge, car issint poet le realm remainer disgarny de fort gente, because if many others should do the like, and by that means the Realm be left unfurnished of able and powerfull men to serve the King, that might tend much to the disturbance of the publique quiet thereof. Vide supra 198, 35. & infra 16. & Max. 78. 27. & Dyer 128. pl. 61. None shall go beyond sea.

Co. ibid. 246. a. 1. 4 Regularly, no laches shall be adjudged in an Infant within the age of 21 years; yet the Publique Repose of the Realm, concerning mens freeholds and inheritances, shall be preferred before the privilege of Infancy, in case of a fine, when the five years begin in the time of the Ancestor. Vide Pl. Co. 372. Infant.

Co. ibid. 328. a. 3. 5 The disseisee, or any other that hath a right only by his release or confirmation, cannot make any discontinuance, because nothing can pass thereby, but that which may lawfully pass: But otherwise it is of a feoffment, in respect of the livery of seisin, for that it is the most solemn and common assurance in the Country, and to be maintained for the Common quiet and repose of the Commonwealth. Release. Feoffment.

Co. ibid. 361. b 3. Co. l. 1. 106. a. 4. in Shelley case. 6 If a judgement be given against a tenant in tail upon a faint or false action, and tenant in tail die before execution, no execution can be sued against the issue in tail: But if in a Common Recovery judgement be had against tenant in tail, where he voucheth, & hath judgment to recover over in value, albeit the tenant in tail dieth before execution, yet the Recoveror shall execute the judgement against the issue in tail, not only in respect of the intended recompence, but likewise for that it being the Common assurance of the Realm, is much favoured in Law for the publique quiet and repose of the Commonwealth. Common recovery.

Co. ibid. 161. a. 3. 7 Incloser is adjudged in Law a disseisin of the rent, because the Lord cannot justifie to break open the gates, or break down the Inclosures to take a distress, for that would be in disturbance Incloser.

of

of the publique peace and quiet of the Common-wealth.

Exchequer Seal.

8 The Judges in general cases have great respect and consideration, that their judgement may not impeach or prejudice a multitude of people against antient and common approbation; and therefore in Lanes case in the 2 Rep. a lease under the Exchequer seal was adjudged good, albeit by the Common law no grant of any land by the King is available or pleadable, but under the Great Seal, yet the antient usage of that Court makes such leases to be good and available in in Law; For if such leases should not be good, great mischief would ensue thereupon, because an infinite number of leases and grants under the Exchequer Seal would be said to be void, and as great a number of grants of reversions expectant upon such leases would be void also, for if the King grant a reversion, where he hath a possession, his grant is void: And therefore, lest their judgement in that case might disturb the publique repose of the Common-wealth, leases under the Exchequer Seal were adjudged good and available in Law, as aforesaid, &c. Co. l. 2. 17. a. 1. *Lanes* case.

Common assurances.

9 In Common Recoveries, and other common assurances it would be a thing too perilous to make any construction against the general assurance thereof, for thereupon would arise infinite contentions, quarrels and suits, which would be inconvenient, and stir up trouble and disquiet in the Common-wealth, whereas the end of the Law is to settle and establish repose and tranquillity betwixt man and man concerning their possessions. Co. l. 2. 75. a. 3. in the Lo. *Cromwels* case.

Imprisonment

10 The body of the defendant was not liable to the execution for debt at the Common Law, Vide 23 H. 4. 1. But the Common Law, which is the preserver of the Common peace of the land, abhors all force as the Capital enemy thereof; And therefore against such as commit any force, the Common Law subjects their bodies to Imprisonment, which is the highest execution, and whereby he loseth his liberty; until he hath agreed with the party, and made fine to the King. Co. l. 3. 12. a. 3. in Sir *william Harberts* case.

False News.

11 The Statutes of Westm. 1. cap. 33. and of 2 R. 2. cap. 5. which prohibit false and scandalous news, whereby debate might arise between the Lords and Commons in disturbance of the peace and quiet of the Common-wealth, seem to be but declarations of the Common Law; for (doubtless) that offence was punishable at the Common Law before the making of those Statutes, because it was prejudicial to the peace and repose of the Common-wealth, and might be a cause to raise Sedition in the Realm; As the Poets describes it. Co. l. 4. 13. Actions of Slander.

> Ac veluti magno in populo cum sæpe coorta est
> Seditio, sævitq; animis ignobile vulgus,
> Jamque faces & saxa volant, furor arma ministrat.

In which tumults another Poet saith,

> Non novit medium rustica progenies.

Murder. Constable.

12 If upon an Affray made, the Constable and others in his assistance come to appease the Affray, and to keep the peace, and in doing their office the Constable or any of his assistants are slain, this is murder in Law, albeit the Murderer did not know the party that was slain, and although the affray was sudden; because the Constable and his assistants come by authority of Law to keep the peace, and so prevent the danger that might ensue by the breach thereof; and therefore the Law adjudged it Murder, and that the Murderer had malice Co. l. 4. 40. b. 4. in *Tongs* case, & Co. l. 9 66. a. 4. & 68. a. 4. in *Mackallyes* case.

malice prepenſe, becauſe he oppoſed himſelf againſt the juſtice and publique repoſe of the Commonwealth: So if a Sheriff or any of his Bailiffs or other Officers be ſlain in the execution of a proceſs of Law, or in doing their office, it is Murder: There is the ſame Law also of a Watchman, that is ſlain in doing his office: Upon the ſame reaſon it is, that the generalty of the Statute of the 33 H. 8. 6. prohibits not Sheriffs and their officers to carry about them (in execution of Juſtice, and in order to the peace and quiet of the Realm) the weapons therein forbidden.

Co. l. 5. 71. b. in *Saint-Johns* caſe.

Guns.

Co. l. 5. 91 b. 1 in *Swaynes* caſe.

13 In order to the general peace and quiet of the Commonwealth every mans houſe is to him as his Caſtle and Fortreſs, as well for defence againſt injury and violence, as for his repoſe, And albeit the life of a man is a precious thing, and much favoured in the eye of the Law, ſo as albeit one man kill another in his own defence, or per infortunium, without any intent, yet the Law adjudgeth that felony, and thereby he ſhall forfeit all his goods and chattels, for the great regard that the Law hath to the life of a man: Howbeit, if Thieves aſſault a mans houſe to robb or murther him, and the owner or his ſervants kill any of the Thieves in defence of himſelf and his houſe, this is not felony, neither ſhall he loſe any thing thereby; And with this agrées 3 E. 3. Tit. Corone 303. & 305. & 26 Aſſ. pl. 23. So likewiſe it is held in 21 H. 7. 39. that a man may juſtifie to aſſemble his friends and neighbours to defend his houſe againſt violence, but not to go with him to the Market or elſewhere to guard himſelf from violence: And all this to eſtabliſh quiet and tranquillity in the Commonwealth.

A mans houſe his Caſtle.

Co. l. 5. 125. a. 2. in the caſes of Libels

14 Every Libell (which is called famoſus Libellus, ſeu infamatoria ſcriptura) is made either againſt a private man, or againſt a Magiſtrate, or publique perſon: if it be made againſt a private perſon, it deſerves a ſevere puniſhment, for albeit the Libel be only made againſt one, yet it invites all of the ſame family, kinred, or ſociety to revenge, and ſo tends (by conſequence) to quarrels and diſturbance of the peace and quiet of the Commonwealth, and may be the cauſe of effuſion of blood, and of great inconvenience: If it be againſt a Magiſtrate or other publique perſon, that is yet a greater offence, for this concerns not only the breach of the peace, but the ſcandal of Government; becauſe what greater ſcandal can there be to Government, than to have corrupt and wicked Magiſtrates to be ſubſtituted by the King to govern his Subjects under him? Neither can there be greater imputation to the State, than to permit ſuch corrupt men to ſit in the ſacred ſeat of Juſtice, and to have any medling in or concerning the adminiſtration of Juſtice, which conceit being fixt in the minds of the people, may be a cauſe of tumults and ſedition, to the great diſturbance of the quiet and repoſe of the Commonwealth.

Libels.

F N.B. 81. d.

15 Albeit Juſtices of Peace have not expreſs authority given them by their Commiſſion to take recogniſzance for the keeping of the peace, yet the Law gives them thereby that power ex congruo, in order to the publique quiet of the Commonwealth, for that they are thereby Conſtituted to be Conſervatores Pacis, and impowred to cauſe men to keep the peace, and to hear and determin offences committed againſt the peace and quiet of the Realm: The Common Law giveth alſo power to the Sheriff (either upon a writ of Supplicavit, or without ſuch a writ) to take a Recogniſzance for the keeping of the peace, becauſe he alſo is Conſervator Pacis, and to that end and purpoſe hath the guard and cuſtody of the County committed to him for the time that he continues Sheriff, as appears by the words of his Commiſsion and Patent; Rex, &c. Commiſſimus vobis Cuſtodiam, &c. And what the Juſtices or he do in that behalf, is matter of Record, and ſo ought

to

to be deemed, for that it concerns the Publique peace and tranquillity of the Commonwealth.

A man may go beyond sea

16 By the Common Law any man may go out of the Realm to imploy himself as a Merchant, or to undertake a pilgrimage, or for any other cause at his pleasure, without demanding license of the King, neither shall he incurr any punishment for so doing: Howbeit, because every man in right is bound to defend the King and his realm, and to preserve the publique repose and tranquillity of the Commonwealth from foreign invasions from abroad, and intestine sedition and insurrection at home, the King may at his pleasure command by his writ De securitate invenienda, quod se non divertat ad partes exteras sine licentia Regis, under the Great Seal, Privy Seal, or Signet, that he shall not go beyond sea without the Kings license; And if he do, he shall be fined for disobeying the Kings command. Vide 3. F.N.B. 85. a.

Uses.

17 In case of a Feoffment or other conveyance, whereby the feoffee or grantee, &c. is in by the Common Law, a Proviso for a power of Revocation is meerly repugnant and void; but in a voluntary conveyance, which passeth by raising of Uses, being executed by the Statute of 27 H. 8. 10. and now become very frequent, by such a Proviso it is lawfull for the Covenantor at any time during his life to revoke any of the said Uses, &c. And these revocations are alwaies favourably interpreted, because now to interrupt that Course would disturb the Publique quiet of the Realm, many mens Inheritances depending thereupon. Co. Inst. pars 1. 237. a, b.

Warranty collateral.

18 In 50 E. 3. (Rot. Parl. 77.) it was attempted in Parliament to have a Statute made, that no man should be barred by a warranty collateral, but where Assets descend from the same Ancestor; but it could never take effect, because it would weaken common assurances, and (by consequence) disturb the peace and quiet of the Commonwealth. Co. ibid. 373. b. 1.

Remainders.

19 For as much as in conveyances, limitations of Remainders are usual and common assurances, it is dangerous by conceipts and nice distinctions to bring them in question (as hath of late time been attempted) left thereby the quiet repose of the Commonwealth may be interrupted. Co. Inst. pars 1. 299. a, b.

Descent to toll Entry.

20 The Statute of the 32 Hen. 8. 33. (concerning descents to toll entries) shall be understood of a descent upon any disseisin, albeit the words are of entries with strength: And this large interpretation of the words is given for the better preservation of the peace and quiet of the Country: By the Opinion of all the Justices. Dyer 219. 7. 5. Eliz.

Descent of the Royal line.

21 In the Starre-Chamber the Countesse of Shrewsbury was fined 1000 l. and committed to the Tower; for that being called to the Council Table, and Interrogated what she knew, or had heard, or thought of a supposed child, which was rumored that the Lady Arabella should have had, she refused obstinately to make any answer: because it was judged, that this was a question of State, and proper for the Council Table to take cognizance of; for there is not one thing that doth more concern the peace and quiet of a kingdom, than the certainty of the Royal line, &c. Hob. 235.

201 *Conventio ſeu beneficium privatorum non poteſt publico juri derogare.* Vide ſupra 198, 29.

Partition.

Co. Inſt. pars 1. 166. a. 4. Litt. §. 244

1 No private contract or agreement, which varies from the ordinary courſe of Law, and ſounds in prejudice of the Commonwealth or Common right, ſhall be deemed good in Law; as if a Caſtle that is uſed for the neceſſary defence of the Realm deſcend to two or more Coparceners, and they by agreement chuſe certain of their friends to make partition between them, who make partition of the Rooms and Chambers of the Caſtle, aſſigning ſome to one, and ſome to another, &c. this Partition is void, becauſe a Caſtle, which is to be kept intire pro bono publico, and for the ſafeguard of the Commonwealth, will not admit of any ſuch diviſion; albeit ſuch a partition of other lands that are partable, has been good in Law, and binding to the Coparceners after election of their ſeveral Parts: Neither ſhall ſuch a Caſtle be aſſigned for Dower, albeit the parties conſent thereunto, becauſe the publique ſhall be preferred before the private.

Dower.

Co. ibid. 31. b. 3.

Rent out of a leaſe for years.

Co. l. 7. 23.a. 3. *Buts* caſe.

2 A. ſeiſed of black acre in fee, and alſo poſſeſſed of white acre for years, grants a rent charge out of both to B. for his life, with Clauſe of Diſtreſs, &c. In this caſe, the eſtate of the rent, being a Frankitenement (according to the purport of the deed) cannot iſſue out of the term for years, but out of the land only, which the grantor had in fee-ſimple, becauſe the Frankitenement of the rent cannot iſſue out of a Chattel, and the intire rent cannot be Frankitenement out of black acre, and a chattel out of white acre, and to make two rents, when one only is granted, would be injurious; Neither yet can the contract and mutual agreement of the parties charge ſuch a thing with a rent, which is not chargeable by Law, as out of an Hundred, or Advowſon, 30 Aſſ. Pl. 5. or out of a Fair, 14 E. 3. Scire facias 122. The Earl of Kents caſe: Neither can a rent be granted or reſerved of any eſtate of Frankitenement out of any other Frankitenement, which is not mainourable, either in poſſeſſion, reverſion, or by poſſibility, but is only hæreditamentum incorporeum; for Pacta privata non derogant juri communi; And in an Aſſiſe they cannot be put in view, neither can any diſtreſs be taken in them; And in the caſe above, albeit white acre be hæreditamentum corporeum and mainourable, yet in reſpect of the eaſility and incapacity of the intereſt which the grantor hath in it, that rent of Frankitenement cannot iſſue out of it, but out of the lands in fee ſimple: And in that caſe alſo, in an Aſſiſe brought for the rent, the land in fee ſhall be only put in view; And if the Grantee ſhould accept a leaſe or grant of white acre, that will not ſuſpend his rent.

Recovery. Title.

Co. l. 9. 128. a. 4i in *Sondayes* caſe.

3. Term. Hill. 8. Iac. it was reſolved by the two Chief Juſtices, the Chief Baron, and the Court of Wards, that no condition or limitation, be it by act executé, or limitation and uſe, or by deviſe in a laſt will, can barr tenant in tail to alien by a Common recovery, for the cauſes and reaſons reported at large in Sir Anthony Mildmayes caſe in the 6. Report.

Confirmation

Co. l. 9. 141. b 3. in *Beaumonts* caſe.

4 If there be Lord and tenant of a Carue of land, and the tenant hath iſſue, and is attainted of felony, and the King pardons him, and after the Lord confirms the eſtate of the tenant, and the tenant dies; In this caſe the Lord ſhall have the land againſt his own confirmation, for the confirmation cannot add to the eſtate of the tenant a deſcendible quality to him, who was diſabled to take the land by deſcent; For Pacta privata juri publico derogare non poſſunt.

5 Baron

The like.

5 Baron and feme being tenants in ſpecial tail, the remainder to the heirs of the Baron, the Baron levies a fine to E. 6. who grants to the Earl of Hunt. in fee, the Baron dies, and the Feme enters, and the E. of H. confirms her eſtate, Habendum to her and the heirs of the body of the Baron, then the Feme dies having iſſue a ſon; In this caſe, the confirmation is void, for it cannot add a deſcendible quality to the iſſue in tail, who was diſabled by the fine to take by deſcent; Again, if that confirmation ſhould add to the eſtate of the feme a deſcendible quality, it would in effect (as to that point) repeal no leſs than two Acts of Parliament, viz. 4 H. 7. 24. and 32 H. 8. 36. by which the eſtate in tail is barred as to the iſſues, and the iſſues are diſabled to claim the Land by force of the ſaid eſtate tail. Sed Pacta privata, &c. Co. ibid. 118. b. & 141. b 4.

Common Recovery.

6 Tenant in tail cannot be prohibited by any condition or limitation to barr the iſſues in tail, as alſo the reverſions or remainders, by ſuffering a Common Recovery; much leſs can he be prohibited to prevent by any ſuch condition or limitation a going about, conclusion, or agrément to ſuffer ſuch a recovery; for to ſuffer ſuch a recovery to the purpoſes aforeſaid, is an incident ſo inſeparably annexed to an eſtate tail, that it cannot poſſibly be prohibited by any ſuch condition, limitation, or other agrément whatſoever betweene the Parties, Conventio privatorum non poteſt, &c. So likewiſe Dower or tenancy by the Curteſie cannot be reſtrained by condition, becauſe they are annexed to the eſtate tail by Law, no more than a tenant by the Curteſie or tenant in tail after poſſibility can be by condition made puniſhable for waſte: Alſo things ordained by Statute, cannot be reſtrained by condition, &c. as that the tenant in tail ſhall make no leaſes, according to the Statute of 32 H. 8. 28. or levy a fine, according to the Statutes of 4 H. 7. 24. & 32 H. 8. 36. to barr the iſſues; for none of theſe, which are incident to his eſtate by Act of Parliament, can be reſtrained by condition or limitation. Co. l. 10. 38. b. 1. & 4. *Mary Portington's* caſe.

Auditors of the Wards.

7 The King himſelf cannot do any thing againſt an Act of Parliament, when the ſubject hath alſo an intereſt in it: And therefore albeit the words of the grant to the two perſons ordained by the Statute of 32 H. 8. 46. to be Auditors of the Court of Wards, be conjunctim & diviſim, et alterius eorum diutius viventis, yet that being an office of truſt, there ſhall be no ſurvivor thereof; for that it being enacted by that Statute, that there ſhould be two perſons, &c. which ſhould have a judicial voice, the King cannot conſtitute one only; for the ſubject by the Act hath intereſt therein: Et ſecurius expediuntur negotia commiſſa pluribus; Albeit, the King may conſtitute one at one time by one patent, and another at another time by another patent; And albeit he may ſo do, yet he who is firſt conſtituted, hath not any judicial voice, until the other be conſtituted alſo, for it is provided by the Statute, that two perſons, &c. ſhall be one officer; and therefore theſe words, Conjunctim et diviſim, et alterius eorum diutius viventis, ſerve only to this purpoſe, that the ſurvivor ſhall be one of the perſons, unto whom the other ſhall be added. Co. l. 11. 3. b. 4. in Auditor *Curles* caſe.

A fraudulent grant.

8 The Maſter and Fellows of Magdalen College in Oxford having an intent to grant a Meſſuage in London to Benedict Spinola and his heirs (becauſe they were prohibited by the Statute of 13 Eliz. 10. to grant it immediately to him) made a grant thereof firſt to the Queen and her ſucceſſors, upon condition (contained in the ſame grant) that the Queen within 3. moneths ſhould grant the ſaid Meſſuage to Spinola and his heirs; whereby it was endeavoured, that the Queen, who was the fountain of Juſtice, ſhould be an Inſtrument of Injury and tort, and of the violation of a pious and excellent Law, which the her Co. l. 11. 73. b. 1. in *Magdalen* College caſe.

ſelf

ſelf (for the maintenance of Religion, the advancement of Liberal Arts and Sciences, the ſuſtenance of poor people, and other publique uſes) had made: And whereas the ſaid Maſter and Fellows were ſeiſed of the ſaid Meſſuage to them and their ſucceſſors for ever in jure Collegii pro bono publico, and to pious and charitable uſes, thereby it ſhould be converted to the private uſe of Spinola and his heirs for ever: And ſo (as the Statute of Carliſle hath it in 35 E. 1. Quod olim in uſus pios ad divini cultus augmentum, & cætera opera pietatis charitative fuit erogatum, nunc in ſenſum reprobum eſt converſum; which alſo the Poet well reprehends,

——— fuit hæc ſapientia quondam;
Publica privatis ſecernere, ſacra profanis.

Co. l. 11. 87. a. 2. in the caſe of Monopolies. Monopolies.

9 The Monopoly of the ſole making and importing playing Cards was damned, becauſe albeit it was pretended by the preamble of the Patent to be for the good of the Commonwealth (which was indeed the Queens intent when ſhe granted it) yet it was apparent to be very prejudicial thereunto, and meerly intended to be imployed for the private benefit of the Patentée, the Queen being thereby deceived in her grant, and the Commonwealth more abuſed than before.

Dyer 60. a. 21. 36 H. 8. A Member of Parliament.

10 A Member of Parliament is free from arreſts of his perſon, becauſe the King and all his Realm having an intereſt in his perſon for the diſpatch of the publique affairs of the Commonwealth, it is reaſon that the private commodity of any particular man ſhould not in ſuch caſe be regarded, and the rather, for that ſuch arreſt is no diſcharge of an execution, but that after the Parliament he may be taken again thereupon.

202 *Minime mutanda ſunt, quæ certam habuerunt interpretationem.*
Vide Max. 201. per tout.

Co. Inſt. pars 1. 364. b. 4. Co. ibid. 186. a. 1. *Communis opinio.*

1 Littleton at the beginning of the Chapter of Warranty, intending to diſtinguiſh warranty into the three ſeveral kinds thereof, Lineal, Collateral, and that which begins by diſſeiſin, the better to confirm that diſtribution, ſaith, that it is Commonly ſaid there are 3. ſuch kinds of warranty; whereby it may be obſerved, that Communis opinio is of Authority, and ſtands with the Rule of Law, A Communi obſervantia non eſt recedendum. Vide Max. 204. 1.

Co. ibid. 383. b. Litt. §. 733. *Warrantizabimus.*

2 The word warrantizabimus doth only create a warranty, for ſo hath that word of Art been always interpreted; Neither ought there to be any other word (though it may ſignifie the ſame thing in ſubſtance) uſed for warranty; And therefore neither Acquietabimus, or Defendemus, or any other word of the like ſignification will do it: The reaſon why the Law hath rather fixed upon that word (though barbarous) than any other, ſeems to be, to avoid uncertainty, and critical cavils and diſputes about the ſignification of words: And as Ego & hæredes mei warrantizabimus, &c. creates a warranty in Latin, ſo I and my heirs ſhall warrant, in Engliſh, creates a warranty alſo.

Co. l. 6. 43. a. 4. in Sir *Anth. Mildmayes* caſe. Uſes.

3 It was the intent of the Statute of 27 H. 8. 10. (as appears by the preamble, to reſtore the antient Common Law, and to extirpate and extinguiſh all ſubtil inventions, imaginations, and practiſes of Uſes, which had introduced many miſchiefs and inconveniences, mentioned in the ſame preamble: And this was very good and neceſſary for the Commonwealth; for the Common Law hath Rules to direct the eſtates

estates and inheritances of lands, which are certain and infallible; And therefore it is (without comparison) better and much more safe to have estates and inheritances directed by those certain Rules of the Common Law, (which hath been an antient, true, and faithfull servant to this Commonwealth) than by the uncertain imagination and conjecture of any of these new inventors of Uses, without any approved ground of Law or Reason.

Primer seisin. 4 Tenant in Chief, having issue a son, covenants to stand seised to the use of his niece; the son dies; In this case, the King shall not have primer seisin: And two of the chiefest reasons which induced that resolution was, because the experience of the Court of Wards had been always so; and for that a great number of the subjects, which were in peace, would be vexed and molested, if the Common received opinion should be changed. Co. l. 6. 77. a. 3. in Sir *Geo. Cursons* case.

The old Laws best. 5 Interroga Pristinam generationem, & investiga patrum memoriam (Job 8. 8.) Hesterni enim sumus, & vita nostra sicut umbra supra terram. We are but of yesterday, and therefore had need of the wisdom of those that were before us, and had been ignorant, if we had not received light and knowledge from our fore-fathers; Our dayes also upon earth are but as a shadow, in respect of the old and antient dayes past, wherein the Laws have been by the wisdom of the most excellent men (in many successions of ages) by long and continual experience (the trial of right and truth) fined and refined, which no one man (being of so short a time) albeit he should have in his head the wisdom of all the men in the world, in any one age, could ever have effected or attained unto: And therefore it is optima regula, qua nulla est verior et firmior in Jure, Neminem oportere esse sapientiorem legibus, No man ought to take upon him to be wiser than the Laws, which have been received and approved by men of the greatest wisdom in all former ages. Co. l. 7. pars 1. 3. b. 3. in *Calvins* case.

Acts of Parliament. 6 Albeit an Act of Parliament be thus expressed, Dominus Rex statuit, &c. (as there are many so penned, Vide 7 H. 7. 14. & 39 E. 3. 12.) yet if they be entred in the Parliament Roll, and always allowed for Acts of Parliament, it shall be intended, that they were by authority of Parliament, although no mention be therein made of Lords or Commons. Co. l. 8. 20. b. 3. in the Princes case.

Writs not to be changed. 7 Writs formed and of course, viz. Originals, were at first authorized by Parliament, and without Parliament they cannot be altered or changed, but shall still remain the same; albeit they may in some cases seem incongruous: as the original writ De Assisa ultimæ præsentationis was formed in these words, Quis Advocatus tempore pacis præsentavit ultimam personam, quæ mortua est: This form shall hold, and cannot be changed, albeit the Incumbent resigned, as appears in 18 E. 2. Tit. Ass. de dar. pres. 20. & F. N. B. 31. h. So likewise the writ of Warrantia Cartæ is formed thus: Quod juste, &c. warrantizet B. unum Messuagium in D. &c. unde cartam habet, &c. And yet if he be held to warranty by force of an exchange, or by Homage ancestrel, the form of the writ shall not be altered. Vide 9 E. 4. 49. 21 H. 6. 7. & F. N. B. 134. and many other cases may be put upon this ground. Co. l. 8. 48. a. 4. in *Iebu Hebbs* case.

Arbitrement. 8 A. being bound to stand to the award of B. countermands the authority of the arbitrator; In this case, the bond is forfeit; because the Condition is, that A. the obligor should stand to and abide, &c. the rule, order, &c. which form was invented by prudent antiquity, to the end he should not revoke the submission; And it is good always to pursue (in such cases) the antient forms and presidents, which are full of knowledge and wisdom. Co. l. 8. 82. b. 4. in *Vinyers* case.

Co. l. 9. 11. b. 3. in *Dowmans* caſe.

Declaration ſubſequent.

9 The defendant in an Aſſiſe makes title by a recovery ſuffered by A. to certain uſes, the plaintif confeſſeth the recovery, but withall ſaith it was to the uſe of A. and his heirs in fée, and traverſeth, that it was to the uſes mentioned by the defendant: The Jury find that the recovery was ſuffered, as the defendant had alleged, and that by Indenture ſubſequent, the intent of the parties to the recovery was declared to be, as the defendant had alleged: In this caſe, ſuch ſubſequent declaration was adjudged good; for that no miſchief or inconvenience could enſue upon that conſtruction, and if it ſhould be otherwiſe conſtrued, great inconvenience might follow thereupon; becauſe the inheritances of many ſubjects in England depend upon ſuch declarations ſubſequent, or (at leaſt) upon Indentures, which (in truth) were delivered after the recoveries ſuffered, or the Fines levied; and this reſolution concurrs with the common opinion of men learned in the Law, and Common experience, and alterations of ſuch opinions, as concern aſſurances of inheritances, would prove dangerous, and be of ill conſequence in the Commonwealth.

Co. l. 10. 40. a. 3. in *Mary Portingtons* caſe.

Common Recovery.

10 At this day to queſtion the validity of a Common recovery to barr an eſtate tail (albeit the land recovered in value be not had, or the tenant in tail after judgement and before execution dies) is as great an abſurdity, as to deny Common and known Principles; and if any ſhould be ſo impudent, as to diſpute againſt that or any other of the legal Pillars of the Common aſſurances of the lands and inheritances of the ſubjects, he ought not to be heard; And therefore *in a* cauſe depending before the Lords (at a Parliament in Qu. Eliz. time) *One* Hoord an Utter-barriſter (of Counſel with one Vernon, who was barred by a Common Recovery) raſhly and with great malevolence in reaſoning againſt Common Recoveries (not knowing the reaſon and foundation of them) was with great gravity and ſoure acrimony reproved by Sir James Dyer, then Chief Juſtice of the Common pleas, who ſaid, that he was not worthy to be of the profeſſion of the Law, that durſt ſpeak againſt Common Recoveries, which were the very ſinews of the aſſurances of Inheritances, and founded upon great reaſon and authority: Semper in fictione iuris ſubſiſtit æquitas, Et contra principia negantem non eſt diſputandum.

Co. l. 11. 35. a. 3. *Alexander Powlters* caſe.

Houſe-burning.

11 In Alexander Powlters caſe in the 11 Rep. it being doubted (upon the penning of the ſeveral Statutes of 23 H. 8. 1. 25 H. 8. 3. 1 E. 6. 12. 3, & 6 E. 6. 10. & 4, & 5. P. & M. 4.) whether or no one guilty of Houſe-burning ſhould be allowed his Clergy; The Judges had conference with divers Clerks of Aſſiſe, and other antient Clerks, to the end they might be ſatisfied of the uſual courſe therein; And for that (upon view of many Records) it appeared, that the Principals and Acceſſories (before) had been always outed of their Clergy in caſe of Houſe-burning (except one in Eſſex before Sir John Puckering and his Companion, Juſtices there) the ſaid Powlter had judgement to be hanged for ſetting an houſe in Newmarket on fire, whereby moſt of the Town was burnt, and therefore was ordered to be hanged in Chains, &c.

Co. l. 11. 83. a. 2. *Lews Bowles* caſe.

Waſte.

12 B. covenants to ſtand ſeiſed of the Manor of D. to the uſe of himſelf and his wife for life without impeachment of waſte, the remainder to his 1. 2. and 3. ſons ſucceſſively in tail, the remainder to the heirs of the bodies of B. and his wife, with other remainders over; they have iſſue a ſon; then B. dies, the wife enters, the ſon dies, a piece of a Barn parcel of the premiſſes is blown down by wind, the wife raiſeth 30 loads of timber blown down to be carried from off the Manor, for which he in the remainder brings an action of Trover and Converſion: And upon the argument of this caſe two queſtions were

were moved, 1. Whether or no the wife shall be tenant in tail after possibility, or that she shall have the privilege of tenant in tail after possibility, viz. to make waste? 2 Admitting she shall not have the privilege, &c. whether the clause, without impeachment of waste, gives to her property in the timber so thrown down by the wind; whereupon it was resolved, that she had a property in the timber, and might convert it to her own use; for that (as was said) it was the continual and constant opinion of former times, that these words, without impeachment of waste, do give power to the lessee to make waste to his own use, and it would be dangerous now to recede therefrom; And as it was said by the Judges in 38 E. 3. 1. So the present Judges do say in this case. We will not change the Law, which hath always been used; Also it is well said in 2 H. 4. 10. It is better that there should be a default or defect, than that the Law should be changed.

13 Albeit the King hath a prerogative above others, that he may sue in what Court he pleaseth, as to bring a Quare Impedit, or a writ of Escheat of Lands in London, returnable in the Kings Bench, yet he cannot change the nature of the writ, otherwise than the Law gives power to him and others, or hath been formerly used. F. N. B. 7. b. Finch 84.

Assise of Fresh force in *London*.

14 In an Assise of Fresh force in London before the Maior and Aldermen, against Foxley and Agnes his wife, and 11 others, 10 of them appear by Bailiff, and plead, No such woman as Agnes the wife of Foxley, in rerum natura, and demand judgement of the Plaint, and that it should be inquired by the Assise, &c. and the others plead the same plea by Attorney: And it was adjudged, that the Plaint should not abate, but should stand good against all the rest, save only Agnes: And this resolution was given upon the advice of Justice Hales to Southcote (then Judge of the Huskings, where the suit was brought) because (as Hales said) all the books went that way, and not one the other way: And therefore he advised Southcote to follow the judgements formerly given. Pl. Co. 90. b. 4.

Trial of accessory.

15 An accessory shall not be arraigned as accessory before all the principals be attainted, because it hath been always the usual course in such cases so to proceed; and therefore it seemed the best way to the Court to pursue the same order, that the Sages have formerly used; and the rather, for that he may not be accessory to one, and yet may be found accessory to another. Pl. Co. 99. b.

Common Recovery.

16 In the case of a Common Recovery, he that enters into the warranty may (if he please) save his rent issuing out of the land; yet if he enter into the warranty generally, it may be saved by covenant and agreement in the Indenture made before the recovery, as may be agreed betwixt them, and this in favour of Common Recoveries, which are the Common assurance of land, the usual form whereof shall not be altered by any special matter of Entry, saving his rent or condition, but they ought to be saved by the Indenture debors: For Conveyances, which are used for Common assurances of land shall be expounded and construed according to common allowance, without prying into them with Eagles eyes; And therefore, Patch. 35 Eliz. in Dormers case it was adjudged in the Kings bench, that a Common Recovery may be had of an advowson: So was it also adjudged in the Exchequer in Sir Will. Pelhams case, that if a Common Recovery be suffered by tenant for life, it is a forfeiture of his estate, and the reason of both these Judgements was, because that a Common Recovery is by usage a Common conveyance, as a fine, feoffment, &c. And it is said in Trevillians case 5 14. that in Common Recoveries the common usage and the intent of the parties are to be respected, for a Common Recovery had against Baron and Feme shall barr the feme of Co. l. 2. 74. 2. 3. in the L. *Commells* case.

her

her dower, and yet the feme ſhall not have any recompence in value, and therefore in ſtrictneſs of reaſon it is ſtrongly to be maintained, that Common uſage and the intent of the parties make this barr, according to theſe rules, Non recedendum eſt a Communi obſervantia, & Minime mutanda ſunt, quæ certam habuerunt interpretationem. And theſe Rules hold not only in a Common Recovery, but much ſtronger in a fine, which is alſo a Common aſſurance of land; for in caſe of a Recovery the Vouchée may enter into the warranty, ſaving his action, rent, condition, &c. and yet (becauſe Common uſage hath allowed it heretofore) they may be better ſaved by covenant and agreement, as aforeſaid; howbeit, in a fine no ſaving can be contained therein, and therefore by neceſsity (and according to common uſage alwayes allowed) they ought to be ſaved by the direction and Rule of a precedent covenant and grant: Upon which ground it was adjudged in 6 E. 2. tit. Eſtoppel 2. that if a man and his wife enfeoff two by deed, to have and to hold to them and their heirs, and after the feoffor and his wife levy a fine ſur conuſance de droit to them and the heirs of one of them, yet this is no concluſion, but that both of them may have the fee-ſimple, as they had it before.

203 *A Communi Obſervantia non eſt recedendum.*

Littl. §. 371. Co. Inſt. part 1. 229 b 4. Vide Max. 203. 1.

1 The making of an Indenture in the third perſon is the moſt ſure way, becauſe it is moſt commonly uſed, whereby it appeareth, that the form which is moſt commonly uſed in conveyances is the ſafeſt, Magiſter Rerum uſus. It is provided by the Statute of 38 E. 3. 4. that all Penal bonds in the third perſon be void and holden for none, wherein ſome Books (viz. 40 E. 3. 1. 2 H. 4. 10. 8 E. 4. 5.) ſeem to differ, but they being rightly underſtood, there is no difference at all; for the Statute is to be intended of Bonds taken in other Courts out of the Realm, and ſo it appeareth by the preamble of that Act; being (indeed) principally intended of the Courts at Rome, and ſo it appeareth by Juſtice Hankford in 2 H. 4. In which Courts bonds were taken in the third perſon: ſo as ſuch bonds made out of the Realm are void, but other bonds in the third perſon are reſolved to be good, as well as Indentures in the third perſon, by the opinion of the whole Court in 8 E. 4. Indentures in the third perſon.

Co. ibid. 303. a. 3.

2 The antient forms of Courts are to be duly obſerved, as Cum dimiſit, or Cum dedit, and not to ſay that he was ſeiſed and demiſed, &c. and yet if he ſay ſo, it maketh not the Count vitious; But in a barr, replication, or other kind of pleading, the party muſt allege a ſeiſin in the Leſſor or Donor, and antient forms of pleading are alſo to be obſerved. Pleading.

Co. l. 1. 24 b. 3. in *Porters* caſe.

3 The Statute of 23 H. 8. 10. ordains, that if any grant of land, &c. ſhall be made in truſt, to the uſe of any Churches, Chapels, Churchwardens, Guilds, Fraternities, Commonalties, Companies, or Brotherhods, &c. all ſuch uſes ſhall be void, they being no corporations, but erected either of devotion, or elſe by common conſent of the people: yet this Statute doth not make good and charitable uſes (not favouring of any ſuperſtition) to be void, as to find a Grammar-ſchool, to ſuſtain poor people, or any other ſuch good uſe, but only ſuperſtitious uſes; becauſe that Statute hath been alwayes by the Common opinion ſo taken to be; for almoſt all the lands belonging to Towns and Boroughs (not incorporat) to defray the Common Taxes of the Town, or to repair the Highwayes, or the Church, or for ſuſtenance of the poor of the pariſh, or to ſupport other common charges of the pariſh, Charitable uſes.

parish, are conveyed to divers Inhabitants of the parish & their heirs, in trust to imploy the profits thereof to such good uses; & such good uses (albeit prima facie they seem to be within the letter of that Act) were never made void by that Statute: and it is a thing dishonorable to the Law of the Land to make good uses void: And it appears by a case reported by Serjeant Benlowes, that it was held in the Common pleas in 5 & 6. E. 6. that a feoffment to the use of poor people was not within that Act of 23 H. 8. 10.

Office. 4 In Alton Woods case in the 1. Rep. Exception was taken to an office virture officii returned into the Chancery, for it was said, that it ought to have been returned into the Exchequer, but upon the view of infinite presidents of offices found before the Escheator virtute officii, and returned into the Chancery, it was disallowed per totam Curiam. Co. l. 1. 42. b. in *Alton Woods* case.

Perpetuities. 5 In the argument of Corbets case in the 1 Rep. Justice Glanvile said, that betwixt the making of the Statute of 13 E. 1. de donis, &c. & 27 H. 8. such a proviso annexed to the estate tail, viz. that it shall cease, as if the tenant in tail were dead, was never seen or heard of, and therefore he concluded, that it could not be done by Law: And to likewise concludes Littl. fol. 23. in like manner, that if any action Disparagement. might have been brought upon the Statute of Merton, cap. 6. De dominis; qui maritaverint, &c. it would be intended, that sometimes it would have been put in ure; and therefore he concludes, that no action can be taken upon that Statute, in as much as it was never seen or heard, that any action was ever brought thereupon. Co. l. 8. 87. b. 4. *Corbets* case.

Elections in Corporations. 6 Where in the Charters of Corporations it is said, that the choice of the Maior, Bailiffs, Provosts, or the like Magistrates or Officers, shall be chosen by all the Commonalty or Burgesses, if they have been chosen (time out of mind) by a certain select number of the principal of the Commonalty or Burgesses, commonly called the Common Councel or by such like name, and not in general by all the Commonalty or Burgesses, nor by so many of them as will come to the election, such antient and usual elections are good and well warranted by their Charters, and by the Law also; for in every of their Charters they have power given them to make Laws, Ordinances, and Constitutions, for the better government of their Cities, Boroughs, &c. by force whereof, and to avoid popular confusion, if they (by their common assent) do constitute and ordain, that the Maior, Bailifs, or other principal officers shall be chosen by a certain select number of the principal of the Commonalty or Burgesses, as aforesaid, and prescribe also how such select number shall be chosen, such Ordinance and Constitution was resolved (in 40 & 41 Eliz.) to be good and allowable, and to agree with the Law and their Charters, for avoiding of Popular disorder and confusion: And albeit such an Ordinance or constitution cannot be now produced, yet it shall be presumed in respect of such a special manner of antient and continual election (which cannot begin without common consent) that at first such an Ordinance or Constitution was made; Such reverend respect the Law attributes to antient and continual allowance and usage, although it begin within time of memory: Mos retinenda est fidelissimæ vetustatis; Quæ præter consuetudinem et morem Maiorum fiunt, neque placent, neque recta videntur: Et frequentia actus multum operatur. And according to this Resolution the antient and continual usages have been in London, Norwich, and other antient Cities and Corporations, and God defend, that they should be innovated or altered; for many and great inconveniences may arise thereupon, all which the Law hath well prevented, as appears by this Resolution. Co. l. 4. 77. b. in the case of Corporations.

Co. l. 4. 93. a. 4. *Slades* case.

7 Albeit an action of debt lyeth upon a Contract, yet the bargainee may have an action upon the case, or an action of debt for the same at his election, and one of the chiefest reasons of that resolution was, for that George Kempe (secondary of the Prothonotaries of the Kings Bench) produced an infinite number of presidents, as well in the Common Pleas as in the Kings Bench, in the reigns of Hen. 6. E. 4. H. 7. & H. 8. by which it appeared, that the plaintiffs did Count, that the Defendants in Consideration of a sale to them of certain goods, did promise to pay so much money, &c. to which presidents and judgements, being of so great number, and in so many successions of ages, and in the several times of so many reverend Judges, the Justices in this case gave great regard, and so the Justices in antient time and from time to time have done, as well in matters of form, as in deciding of doubts and questions, as well at the Common Law, as in the Construction of Acts of Parliament: And therefore in 21 E. 3. Formedon 32. it is held, that the antient forms and manner of pleadings are to be maintained and observed, and in 34 Ass. pl. 7. that which is not according to the usage, shall not be permitted, and in 2 E. 3. 29. The antient form and order is to be observed. Vide plus ubi supra. Action upon the case.

Co. l. 5. 32. a. *Pettifers* case.

8 Upon fieri facias of the Goods of the Testator, the Sheriff returns nulla bona, &c. hereupon a writ issues to the Sheriff to enquire by Enquest, whether the executors have wasted, &c. The returns they have, and thereupon Judgement was given of their own goods, but the executors suing a writ of error de redditione executionis, the execution was reversed; because this course of proceeding in such case had been taken up of later times, whereas the antient course was upon the return of Nulla bona, to sue a scire fac. to the Sheriff to levy, &c. out of the Testators goods, and if it should appear to him, that the executors have wasted, then out of their own goods: for albeit it was said, that the said newer course was usual in the Common Bench, and more favourable than the antient course was, because thereby the Devastavit shall not be returned by the Sheriff only, but shall be inquested likewise by an Inquest returned, and thereupon a Scire facias ought to be awarded; yet Judgement was given, that the said proceeding was erroneous, because invented of later times; And the rather, for that by the antient course, if the Sheriff make a false return, the party may have his remedy by action upon the case, which is a good mean to inforce the Sheriff to make true and full returns in such cases; but by the said new course, if the Sheriff take an inquest and return it, although it be false, yet the party hath no remedy either against the Sheriff, or any other, which would be inconvenient: by which resolution it may be observed (by the way) how dangerous a thing it is to alter or change the antient forms and courses of Law, for albeit a new way may (prima facie) seem specious and convenient, yet afterwards it will prove incommodious by introducing sundry mischiefs, which cannot be discovered otherwise than by future experience, as in the case above recited: which point (it were to be wished) our late Regulators would well study and consider, before they presume to innovate any thing in the Law. *Devastavit.*

Co. l. 9. 15. a. *Anne Bedingfields* case.

9 In a writ of Dower an essoin was cast, and challenged, for that by the Statute of Essoins 12 E. 2. it is provided, Quod non jacet Essonium in breve de Dote; Howbeit, because the Common essoin hath been allowed in a writ of Dower, therefore the Justices did construe that Statute to extend to an essoin of the Kings service, and not to the Common essoin; And the rather, for that the Statute adveth a Reason of that purview, viz. Quia videtur deceptio & prorogatio Essoin.

tio Iuris, and that is properly to be intended of an eſſoin of the Kings ſervice, which is a delay and prorogation of right for a year. Vide 4 E. 3. 36. 4. Aſſ. pl. 2. Long 5 E. 4. 70.

Ward. 10 Albeit 16 E. 3. Damages 80. and ſome other books are, that Damages ſhall not be recovered in a writ of Raviſhment of Ward, yet for that it is held in 17 E. 3. 57. and many other books (quas vide infra) and agreeth with common experience, that Damages ſhould be recovered in that writ, it was ſo reſolved accordingly. Co. l. 9. 74. b. 2. in Dr. Huſſeys caſe.

Baſtardy. 11 It appears by the Statute of Merton, that all the Biſhops inſtances the Lords, that they would conſent, that all ſuch as were born before Matrimony (marriage following after) ſhould be legitimate, as well as they that were born within Matrimony, as to the ſucceſſion of Inheritance, for that the Church accepted ſuch to be legitimate: But all the Earls and Barons with one voice anſwered, Nolumus Leges Angliæ mutare, quæ hactenus uſitatæ ſunt et approbatæ. Co. l. 5. pars 1. 12. a. 1. & Merton 20 H. 3.

A writ to the Coroners. 12 If a writ be directed to Coroners, Coronatoribus de Comitatu, or in Comitatu, have the ſame conſtruction, de and in (in ſuch caſe) ſignifying the ſame thing; yet becauſe in (in ſuch caſe) hath been moſt frequently uſed, upon ſuch a direction to the Coroners, de ought to be rejected, and in retained: for the order of the Regiſter is, that all writs directed to the Sheriff ſhall be Vicecomiti de Comitatu, but thoſe directed to the Coroners, Coronatoribus in Comitatu; as an Attachment againſt the Sheriff for not returning a Replevin, is directed Coronatoribus in Comitatu, &c. So is likewiſe the writ of Certifying an Outlawry, as appears in the book of Entries, and ſo all other writs, as a Diem clauſit extremum is, Eſcheatori in Comitatu, and the like: And he that finds fault with this direction, argueth againſt the Regiſter, and alſo againſt the common uſage of the Law heretofore practiſed. Pl. Co. 76 b. 4. Wimbiſh & Willoughby.

Phraſe. 13 If I give you a pint of wine, you ſhall not have the pint-pot; but if I give you an Hogſhead of wine, you ſhall have the Hogſhead, for the phraſe of the language commonly uſed expreſſeth the intent, Et a Communi obſervantia, &c. Pl. Co. 85. b. 4. Partridges caſe.

14 A writ of Inquiry being directed to the Sheriff himſelf to be executed, he makes return, Quod mandavit Balivo Hundredi de B. &c. Qui quidem Baliyus ſic ſibi reſpondit, And ſo ſets down the Inquiſition taken before the Bailiff, and 40 l. damages; Notwithſtanding upon a writ of Error it was agreed by all the Judges, that the return was inſufficient; becauſe it was apparently untrue and againſt Law; for that the warrant was directed to the Sheriff himſelf to be executed in any part of the County, and no Vemecontained in that Inqueſt of office, as there is in other writs, which intitle the Bailiffs of Liberties: Notwithſtanding, the Court would not reverſe the judgement, becauſe there were others of the like kind, both in the Kings Bench and Common Pleas, eſpecially in Suffolk and Norfolk in later times. Vide Hob. 84. Skeat and Oxonbridge ſuch an allowance in a writ of waſte. Hob. 83. Viraly and Gunſtone.

Star-chamber 15 In a ſuit in the Starr-chamber witneſſes were examined to prove what was depoſed concerning a ſuit in the Eccleſiaſtical Court; but becauſe depoſitions were not allowed in the Starr-chamber taken in other Courts, they were rejected, as a crafty device to induce depoſitions againſt the Rule of the ſame Court. Hob. 114.

204 *Eventus varios Res nova ſemper habet*; And therefore it hath new Inventions, and Innovations.

Co. Inſt. pars 1. 379. a. 2. 1 Sir Edward Cooke ſpeaking of Juſtice Richel his Perpetuity, obſerves, that new inventions (though of a learned Judge in his own profeſſion) are full of Inconvenience: Periculoſum eſt res novas ex inuſitatas inducere. And that Author ſaith farther, that Littleton in the debate of that caſe (§. 721, 722, & 723.) hath taught us an excellent point of learning, that when any innovation or new invention ſtarts up, the beſt way is to try it by the Rules of the Common Law, for they are the true touchſtones to ſever the pure gold from the drofs, and ſophiſtications of novelties and new inventions: And by this example (he ſaith) you may perceive, that the Rules of the Common Law (which are indeed the Maximes of Reaſon) being ſoundly applyed to ſuch novelties, it doth utterly cruſh them and bring them to nothing; for commonly a new invention doth offend againſt many Rules and reaſons of the Common Law: And therefore the antient Judges and Sages of the Law have ever ſuppreſſed innovations and novelties, as ſoon as they have offered to creep up, leſt the Quiet of the Common Law might be diſturbed, and ſo have Acts of Parliament alſo many times done the like: And the Judges ſay in 38 E. 3. We will not change the Law, which always hath been uſed And another ſaith in 2 H. 4. 18. It is better that it be turned to a defaute, than that the Law ſhould be changed, or any innovation made. And therefore new and ſubtil inventions ought not to alter any principle of the Common Law. Vide ſupra 184. 21. & 159. 2. Invention.

Co. ibid. b. 1.

Co. ibid. 282. b. 3.

Co. ibid. 303. b. 4.

Co. ibid. 377. b. 4. 2 The Invention deviſed by Juſtice Richel (an Iriſhman born) in the time of R. 2. & the like by Thirning Chief Juſtice in the time of H. 4. were both full of imperfections, for nihil ſimul inventum eſt & perfectum, and ſæpe viatorem nova non vetus orbita fallit: And therefore new inventions in aſſurances are dangerous. The like.

Co. l. 1. 87 a. 4. in *Corbets* caſe. 3 If a man make a feoffment in fee of land to the uſe of A. and his heirs every Monday, and to the uſe of B. and his heirs every Tueſday, and to the uſe of C. and his heirs every Wedneſday, theſe limitations are void, becauſe it is a new invention, there being no ſuch fractions of eſtates found in the Law: And therefore not to be permitted for the inconvenience that may enſue thereupon. Perpetuity.

Co. l. 1. 138. a. 3. in *Chudleys* caſe. 4 By the Statute of 27 H. 8. of Uſes, ſome uſes were executed preſently, others by matter ex poſt facto, and others again were extirpated and extinguiſhed by that Act: Uſes in eſſe did draw the poſſeſſion preſently by force of the Act; Uſes limited in futuro, and agreeable to the Rule of the Common Law, are alſo, if they become in due time in eſſe, within the proviſion of that Statute; but uſes invented and limited in a new manner, and not agreeable to the antient Common Laws of the land are utterly extirpated and extinct by that Act; for it appears by the expreſs letter of the Act, that it was the intent of the Parliament to extinguiſh and root them out, and to reſtore the antient Common Law of the Land. Vide plus ibidem. The like.

Co. l. 5. 32. a. *Pettifers* caſe. 5 Upon a fieri facias of the goods of the teſtator, the Sheriff returns nulla bona, &c. And thereupon another writ iſſues to him to inquire by Enqueſt, whether or no the executors have waſted, &c. he returns they have, and thereupon execution is awarded of their own goods; but this award of execution was reverſed by writ of Error; becauſe that practice has been taken up of late dayes, whereas the antient courſe was (and ſince the judgement in this caſe is taken up again) to ſue a fieri Devaſtavit.

fieri facias to the Sheriff to levy, &c. of the teſtators goods, and if it appear to him, that the executors have waſted, &c. then of their own goods: And in ſuch caſe an action upon the caſe will lie againſt the Sheriff if he make a falſe return; whereas in the other caſe no ſuch action lies, becauſe the Sheriff makes his return by Inqueſt.

Perpetuity. 6 All perpetuities (being new inventions) are againſt the reaſon and policy of the Common Law; for at the Common Law all Inheritances were fee-ſimple, to the end that neither Lords ſhould be defeated of their eſcheats, wards, &c. nor purchaſors or farmers ſhould loſe their eſtates or leaſes, or be evict by the heirs of their grantors or leſſors, nor ſuch infinite occaſions of troubles, contentions, or ſuits ſhould ariſe: And therefore it may be truly averred, that the policy and Rule of the Common Law in this point was in effect ſubverted by the Statute de donis made in 13 E. 1. which ordained a general perpetuity by Act of Parliament for all ſuch as had then made it, or would afterwards put it in ure; by force whereof all the poſſeſſions of England in effect were intailed accordingly, which was the cauſe of the ſaid and divers other miſchiefs; Howbeit divers attempts were made for remedy thereof in divers Parliaments, and many bills exhibited accordingly, but they were always upon one pretence or other rejected: Indeed the truth was, that the Lords and Commons knowing that their eſtates tail were not forfeitable for felony or treaſon, as their eſtates of Inheritance were before the ſaid Act (and principally in the Barons warrs in the time of H. 3.) and finding alſo, that they were not chargeable with the debts or incumbrances of their anceſtors, and that the ſales, alienations, or leaſes of their anceſtors did not bind them for the lands which were ſo entailed to their anceſtors, did always reject ſuch bills; And this continued all the reſidue of the Reign of E. 1. and the Reigns of E. 2. E. 3. R. 2. H. 4. H. 5. H. 6. and until about the 12 of E. 4. when the Judges upon conſultation had amongſt them did reſolve, that an eſtate tail might be docked and barred by a Common recovery, and that by reaſon of the intended recompence the Common recovery was not within the reſtraint of the ſaid perpetuity made by the ſaid Act of 13 E. 1. whereby it appears, that many miſchiefs did ariſe upon the change of a Maxim and Rule of the Common Law, which they who altered it could not diſcern, when they made the ſaid change; for Rerum progreſſus oſtendunt multa, quæ in initio præcaveri ſeu prævideri non poſſunt. Vide 8.

Co. l. 6. 40. b. 3. in Sir *Anthony Mildmayes* caſe.

Co. l. 9. 128. a. 4. in *Sondayes* caſe.

Marſhalſie. 7 In Sir Geo. Reynels caſe in the 9 Report, one of the reaſons why the office of Marſhalſie could not be granted for years, was, becauſe it was an antient office, and had been always granted for life, or at will, to the end the perſon to whom it was granted might be certainly known; And therefore to grant it for years, when it was never known to be ſo granted before, being an Innovation, might prove dangerous and of ill conſequence to the Commonwealth.

Co. l. 9. 97. a. 2.

An Intail docked. 8 The docking of an Intail by a Common recovery in 12 E. 4. was no new invention, but conſonant to the opinion of the Sages of the Law, even from the making of the Statute De donis, as appears by divers authorities in our books, viz. in 42 E. 3. 53. in 44 E. 3. 21, 22. Octavian Lumbards caſe, in 48 E. 3. 11. b. Jefferey Beauchers caſe, in 12 H. 4. 13. b. in 2 H. 4. 5. in 5 E. 4. 2. b. which reſolutions and opinions in Law, together with divers others of the like kind, did (as it ſeems) produce the judgement in 12 E. 4. And therefore ſuch barring of an eſtate tail was not then to be eſteemed an innovation or new invention, but the Judges and Sages of the Law then perceiving what contentions and miſchiefs had crept into the quiet of the Law, by ſuch fettered Inheritances, upon conſideration of the ſaid Act, and

Co. l. 10. 37. b. 2. in *Mary Portingtons* caſe.

of the former exposition thereof by the Sages of the Law since the making of the same Act, did in the said 12 year of E. 4. give judgment, that in such case an estate tail should be barred. And in Scholastica's
Pl. Com. 403. case in 12 Eliz. it was not thought fit to stand with the honour and gravity of the Court, that the question concerning the restraint of a Common recovery (which had been so often debated and resolved) should be once moved. Vide supra 6.

Co. l. 11. 87. a. 3. in the case of *Monopolies.* 9 The Queen grants to one of the Privy Chamber the only making, and importation of Cards; This was adjudged a Monopoly, and therefore void; and one of the reasons was, because the grant was primæ impressionis, for no such was ever seen to pass by Letters Patents under the Great seal to that very day: And therefore because it was a dangerous Innovation without president or authority of Law or Reason, and the Queen deceived in their grant, it was adjudged void. *Monopolies.*

Dyer 135. 15. 3, 4. P. M. 10 A Dedimus Potestatem was granted to Justice Saunders to receive an Attorney for the defendant in a Quid juris clamat, but because there could be found no former president for it, it was with much difficulty and after long debate allowed by the Judges, and that upon great necessity, and weakness of the party. *Quid juris clamat.*

205 *Communis Error facit Jus.*

Co. Inst. 1. 52. b. 2. 1 In a deed of feoffment beginning with Omnibus Christi fidelibus &c. or Sciant omnes per præsentes, &c. or the like, a Letter of Attorney may be contained, for one instrument may contain divers deeds to several persons: But if it be by adventure between the feoffor on the one part, and the feoffee on the other part, there a Letter of Attorney in such a deed is not good, unless the Attorney be made a party in the deed indented; howbeit, because it hath been commonly used to insert it in the Indenture, without making the Attorney party thereunto, it hath been permitted to pass, but the other way is safest, and more legal. Communis Error facit Jus. Livery by Attorney.

Co. l. 6. 67. a. 4 in *Sir Moil Finches case.* 2 Where it is required by the Statute of 1 H. 5. 5. that in every writ original, &c. in which Exigent shall be awarded, Additions should be given to the defendants of their estate, degree, mystery, &c. It so fell out, that one, who was by birth but a Yeoman, was commonly called Gentleman; And in that case, in such a writ brought against him he may have the Addition of Gentleman, albeit in truth he is no Gentleman, but only by vulgar reputation: for in as much as the intention of the Act is, that he should have such a name by which he may be known, it is sufficient to satisfie the Act of Parliament; for Communis error, &c. Additions. Stat. 1 H. 5.

206 So doth a Custom, which is reasonable: unreasonable, *contra.*

Co. Inst. spars 1. 59 b. 4 1 Of fines due to the Lord by the Copyholder, some be by the Change or alteration of the Lord, and some by the Change or alteration of the tenant, the change of the Lord ought to be by the act of God, other wise no fine can be due, but by the change of the tenant, either by the act of God, or the act of the party, a fine may be due: for if the Lord do challenge a Custom within his Manor to have a fine of every of his Copyholders of the said Manor, at the alteration or change of the Lord of the Manor, be it by alienation, descent, death, Copyhold fines.

or

or otherwise; This is a custom both against the Law and Reason, as to the alteration or change of the Lord by the Act of the party; for by that means the Copyholders may be oppressed by multitude of fines, by the Act of the Lord: But when the change groweth by the Act of God, there the custom is good, as by the death of the Lord: And this was resolved upon a Case in Chancery by all the Judges and Serjeants of Serjeants Inn in Fleetstreet (Trin. 39 Eliz.) and so certified into that Court: But upon the change by alteration of the Tenant, a fine is due unto the Lord, because that custom is reasonable.

The like. 2 Of fines taken of Copyholders some be certain by custom, and some be uncertain, but that fine although it be uncertain, yet ought it to be rationabilis, and that reasonableness shall be discussed by the Justices upon the true circumstances of the Case appearing unto them; And if the Court, where the cause dependeth, adjudgeth the fine exacted unreasonable, then is not the Copyholder compellable to pay it: And so it was adjudged P. 1 Jac. C. B. rot. 1845. for all excessiveness is abhorred in Law. Co. ibid.

Copyhold custom. 3 In former times it hath been doubted, whether or no, if a Copyholder had been ousted by his Lord, he might have any other remedy therein, than only to sue to his Lord by petition; for it seems, that if the Copyholder might have any other remedy, he could not be properly said to be Tenant at the Will of the Lord according to the Custom of the manor: But Magistra rerum experientia hath made this clear and without question, that the Lord cannot at his pleasure put out the lawful Copyholder, without some cause of forfeiture, and if he do, the Copyholder may have an Action of Trespasse against him; For albeit he be tenens ad voluntatem Domini, yet it is secundum consuetudinem manerii: And Britton saith, speaking of these kind of Tenants, Et sicum gents sont, qui tout franks de sank et tenent terre de nous en villeynage, et sont proprement nos sokemans, et ceux sont priviledges en tels manere, que nul ne les doit ouster de tiels tenements tant come ils sont les services, que a lour tenements appendant, et nul ne poit lour services accresser ne changer, a faire autres services ou plus, autrement que ils ne solaient. And herewith agreeth Sir Robert Danby Ch. Just. of the C. Pl. M. 7 E. 4. 19. and Sir Thomas Brian his Successor M. 21 E. 4. 80. That the Copyholder doing his customs and services, if he be put out by his Lord, shall have an Action of trespasse against him. Co. ibid. 60. b. 3. *Littl.* §. 77. *Britton* fo. 165. Co. ibid. 140. a. 3.

Consuetudo. 4 Consuetudo contra rationem introducta potius usurpatio quam consuetudo appellari debet; Again, Consuetudo ex certa causa rationabili usitata privat communem Legem: And, Consuetudo præscripta et legitima vincit legem. Co. ibid. 113. a. 4.

Villeinage, fine to marry. 5 All customs and prescriptions, that are against reason are void; as if a Lord of a manor will prescribe, that every Tenant, who marrieth his daughter to any man without the Lords licence, shall make fine; This prescription is void, being against reason: because none shall make such fines, but only villeins; for a freeman may freely marry his daughter to whom he pleaseth: And albeit that it hath been objected by some, that such a custom may have a lawful beginning, because Litt. in the beginning of the chapter of villeinage §. 174. allowеth, that a freeman may take lands of the Lord to be holden of him, viz. to pay a fine for the marriage of his son or daughter, and therefore some have thought, that such a custom generally within the manor might be good; but the answer is, that although it may be for a particular Case upon such a special reservation of such a fine upon gift of land, yet to claim such a fine by a general custom within the manor, is against the freedom of a freeman, that is not bound thereunto by par- Co. ibid. 139. b. 4. *Littl.* §. 209.

particular tenure: howbeit a cuſtom may be alleged within a manor, that every tenant (albeit his perſon be free) that holdeth by bondage or native tenure (the freehold being in the Lord) ſhall pay to the Lord for the mariage of his daughter without licence, a fine; And this is termed Marchet, of two french words, Mariage and achecter to buy.

Co. ibid. 140. a 4. & b. 1. *Littl.* §. 210.

6 The cuſtom of Gavelkind in Kent, where all the ſons inherit equally, hath been alwayes allowed a good cuſtom, becauſe every ſon is as well a gentleman, as the eldeſt, and having means may attain to as great honor and preferment as the eldeſt, which by want and penurie may be obſtructed, according to that of Horace, *Gavelkind.*

Haud facile emergunt, quorum virtutibus obſtat
Res angusta domi.

Co. ibid. 140. b. 3. *Littl.* §. 211.

The like cuſtom is uſed and allowed as reaſonable in other parts of England within divers manors and ſeignories, although it be not called Gavelkind in any Country but Kent: And as it is ſaid of ſons, ſo likewiſe (by cuſtom) when one brother dieth without iſſue, all the other brethren may inherit; There is alſo another cuſtom allowed within divers manors, called Borough-Engliſh, where the youngeſt ſon, or youngeſt brother inherits; and in the manor of B. in Berkſhire, where the ſiſters ſhall not be Parceners, but the eldeſt ſiſter ſhall have the inheritance; all which do hold good, becauſe conſonant to reaſon. *Borough-Engliſh*

Co. inſt. pars 1. 141. a. 3.

7 Malus uſus abolendus eſt, and every uſage is evill, that is againſt reaſon; Quia in Conſuetudinibus non diuturnitas temporis, ſed ſoliditas rationis eſt conſideranda; And by this rule at the Parliament holden at Kilkenny in Ireland Lionel Duke of Clarence being then Lieutenant of that Realm, the Iriſh cuſtom (called there the Brehon law) was wholy abolished, for that (as the Parliament ſaid) it was no law, but a lewd cuſtom, et malus uſus abolendus eſt, as is ſaid before. *Malus uſus.*

Co. ibid. 155. a. 2.

8 Albeit the writ of Aſsiſe be, that the Sheriff, Faceret duodecim liberos et legales homines de vicineto, &c. videre tenementum, &c. yet by antient courſe the Sheriff muſt return 24. and this is for expedition of juſtice; for if 12. ſhould only be returned, no man ſhould have a full Jury appear or be ſworn (in reſpect of challenges) without a Tales, which would be a great delay of trials; ſo as (in this caſe) uſage and antient courſe maketh a Law. *Aſsiſe.*

Co. l. 2. 17. a. 4. in *Lancs* caſe.

9 Severance of the frank-tenement and inheritance of land holden by copy of Court-Roll, doth not extinguiſh or determine the Copyhold eſtate; for albeit his eſtate is taken to be but an eſtate at Will, yet the cuſtom hath ſo eſtabliſhed the eſtate of the Copyholder, that he is not removeable at the Will of the Lord, ſo long as he performs the cuſtoms and ſervices: And by the ſame reaſon the Lord cannot determine his intereſt by any Act that he can do, and ſo hath it been oftentimes adjudged in the Kings Bench. *Copyhold.*

Co. l. 4. 21. a. 3. in *Browns* caſe.

10 Albeit a Copyholder hath (in judgement of law) but an eſtate at Will, yet cuſtom hath ſo eſtabliſhed and fixed his eſtate, that it is (by the cuſtom of the manor) deſcendable, and his heirs ſhall inherit it; And therefore his eſtate is not meerly ad voluntatem domini, but ad voluntatem domini ſecundum conſuetudinem manerii: ſo as the cuſtom of the manor is the very ſoul and life of Copyhold eſtates; for without cuſtom, or if they break their cuſtom, they are ſubject to the Will of the Lord: And by cuſtom a Copyholder is as well inheritable to have his land according to the cuſtom, as he who *Copyhold.*

hath

hath a franktenement at the Common Law, for Conſuetudo (in this caſe) eſt altera lex, and being an uſage time out of mind may create and conſolidate Inheritances.

Alienation preſented.

11 A Cuſtom within a Manor, that every alienation of lands holden of the ſame Manor (whether it be by writing or feoffment thereof made, or by will) ſhall be preſented at the next Court holden for the ſaid Manor, in pain that (upon failer of ſuch preſentment) ſuch alienation ſhall be void, is a good and reaſonable Cuſtom: But a Cuſtom, that none ſhall uſe his Common in ſuch a place, until the Lord enter with his beaſts, is void for the unreaſonableneſs: for if the Lord will not enter, it is no reaſon that the Commoners ſhould loſe their Common. Vide 2 H. 4. 24. Co. l. 5. 84 a 3. in *Penimans* caſe.

Common of Shack.

12 Common called Shack (which at the beginning was but in nature of a feeding together by reaſon of Vicinage for avoiding of ſuits) is in ſome places (by Cuſtom) altered to the nature of Common appendant or appurtenant, and in ſome places it retains the original nature, and the Rule to know it, is the Cuſtom and uſage of every ſeveral Town, or place, for Conſuetudo loci eſt obſervanda: And therefore if in the Town of Dale one hath gotten divers parcels of land together (in which the Inhabitants have uſed to have Shack) and long ſince did incloſe it, and nevertheleſs alwayes after harveſt the Inhabitants have had Shack there for their Cattel, This ſhall be taken for Common appendant or appurtenant, and the Owner cannot exclude them from Commoning there, albeit he will not Common with them, but hold his own lands ſo incloſed in ſeverality; And this is well proved by the uſage, for notwithſtanding the antient incloſure the Inhabitants have had Common there: But if in the Town of Sale the Cuſtom and uſage have been, that every Owner in the ſame Town hath incloſed his own land time out of mind, and ſo hath held in ſeverality; there that proves, that it was but in nature of Shack originally becauſe of Vicinage, and ſo continues; And therefore (in ſuch caſe) he may incloſe and keep it in ſeverality, and ſeclude himſelf from having Shack with the reſt of the Commoners. Co. l. 7. 5. a. Sir *Miles Corbets* caſe.

Antient Demeſn.

13 Lands in antient demeſn, which were partable between heirs male, were alienes by fine levied at the Common Law; nevertheleſs it ſeemed to be the better opinion, that hereby the courſe of the Inheritance was not altered, and made deſcendable at the Common Law, but that they ſhall ſtill remain partable, as before. Dyer 72. b 4. 6 E. 6.

Cuſtom unreaſonable.

14 A Cuſtom, that the Lord of a Manor hath uſed to have the beſt beaſt of his tenant there dying, and if ſuch beaſt be eloigned before ſeiſure, that then the Lord hath uſed to take the beſt Beaſt of any other, levant and couchant within the ſaid tenure, was adjudged void for the unreaſonableneſs thereof. Vide 3, 4 Eliz. Rot. 1496. Dyer 199. 58. 3 Eliz.

Lands in *London*.

15 Lands in London may be bargained and ſold in London by paroll without Indenture or enrollment, as before the Statute of 27 H. 8. and this by a Proviſo in the ſame Statute, Chilborns caſe. Dyer 229. 50. 6 Eliz.

Cuſtom.

16 A Cuſtom was alleged, that the tenant in fee could not make a leaſe for above ſix years; and it was adjudged a void cuſtom, becauſe repugnant to fee, and unreaſonable. Salſords caſe. Dyer 357. 46 19 Eliz.

Corps.

17 A Cuſtom for the Incumbent or Churchwardens of a Pariſh to be paid for the burial of a Corps of one who is no pariſhioner, but only paſſing that way by accident, lodging in an Inne, or other lodging, or the like, is an unreaſonable cuſtom and void. Ho. 175. The Lady *Ferrars* caſe.

207 *Licet Conſuetudo ſit magnæ Authoritatis, Nunquam tamen Præjudicat manifeſtæ veritati.*

Co. l. 4. 18. a. 1. *Oxford* and *Croſſes* caſe.

1 The plaintiff bring an action in London, for that the defendant called the wife of the plaintif Whore, the defendant removes it by habeas corpus into the Kings Bench, and it was moved to have a Procedendo to remand it, becauſe the action was maintainable in London for the ſaid words, but not at the Common Law: Howbeit the Procedendo was denyed per totam Curiam; for ſuch a Cuſtom to maintain actions for ſuch brabling words is againſt Law: Licet Conſuetudo, &c. Slander.

Co. l. 6. 6. b. 1. Sir *John Molins* caſe.

2 Ed. 3. Lord, an Abbot Meſne, the tenant is attainted of Treaſon, the King grants to Sir John Molins, to be holden of him and other chief Lords of the fee by the ſervices, &c. In this caſe the Peſnalty is revived: and albeit divers Offices, licences, and other Records were produced to prove the Kings immediate tenure, yet the Barons (before whom that cauſe depended) ſaid, in as much as by conſtruction of Law upon the Letters Patents it appeared, that there was no immediate tenure in the King, albeit it had been otherwiſe found in offices, or admitted in licenſes, or other Records, yet that could not alter the true tenure, which originally appeared (to them as Judges) upon Record: And it was then alſo ſaid, Licet conſuetudo, &c. Records.

Co. l. 11. 75. a. 2. in *Magdalen* College caſe.

3 In Magdalen College caſe in the 11 Rep. (where the Maſter and Fellows of that College had granted to Queen Eliz her heirs and ſucceſſors an houſe in London, with proviſo, that if ſhe did not regrant it within ſome ſhort time to Bened. Spinola and his heirs, that then the grant to her ſhould be void, with intent thereby to defraud the Statute of 13 Eliz. 10.) it was objected, that ſince that Statute there had been a great number of ſuch grants made by Maſters and Fellows of Colleges, Deans and Chapters, Maſters of Hoſpitals, &c, Howbeit to this it was anſwered, that ſuch grants had been made rather ex conſuetudine Clericorum, who imitated preſidents of ſuch grants made before that Statute, than by the ſage advice of men learned in the Law; and Multitudo errantium non parit errori Patrocinium. Grants by Eccleſiaſtical perſons. Stat. 13 El. 10.

F.N.B. 118. c.

4 It appears by the Regiſter, that if a man be found in arrearages upon his accompt, and the plaintif arreſts him in London for thoſe arrearages, that then the plaintif may ſue forth a writ in Chancery directed to the Sheriff, rehearſing this matter, and commanding the Sheriff to detain the Accomptant ſafe in priſon, until he hath paid the arrerages: And it ſeems alſo upon the ſame reaſon, that if a man ſue forth a writ of debt upon arrearages of accompt before Auditors, and hath the party attached, &c. that he may have a writ out of the Chancery directed to the Sheriff to keep him in priſon, until he hath ſatisfied the arrearages: but it ſeemeth to Fitzherbert, that ſuch a writ cannot ſtand with Law, which ſhall command a man to be kept in priſon before he ſhall have anſwered to the ſute commenced againſt him. Accompt. Priſon.

5 Hob. 17. Dr. James his caſe, concerning holding the Court of Audience in the Borough of Southwark, which is within the Juriſdiction of the Biſhop of Wincheſter.

208 Husband and wife are one Perſon, And therefore

Rebutter. 1 If a feme heir of a diſſeiſor enfeoff me with warranty, and then marry with the diſſeiſee, if after the diſſeiſee bring a præcipe againſt me, I ſhall rebutt him, in reſpect of the warranty of his wife, and yet he demandeth the land in another right: So likewiſe if the husband and wife demand the right of the wife, a warranty of the collateral anceſtor of the husband ſhall barr them, becauſe the husband and wife are one perſon in Law: And for the ſame reaſon it is, that a proteca- Protection. on for the husband ſhall ſerve alſo for the wife. Co. Inſt. pars 1. 365. b. 3. Co. ibid. 130. a. b. 1.

Conſpiracy. 2 A writ of Conſpiracy muſt be brought againſt two at leaſt, for if there be ſuch occaſion of action only againſt one, an action upon the caſe lyeth for the falſhood and deceit, becauſe one cannot conſpire with himſelf: and therefore a writ of Conſpiracy for indicting the plaintif of felony lyeth not againſt Baron and feme only, becauſe they are but one perſon, but it may lie againſt Baron and feme and a third perſon. F.N.B. 116. I.

Accompt. 3 In an action of accompt, receit made by the Baron by the hands of the feme is the Barons own receit, and both the writ and Count ſhall ſuppoſe that he received it himſelf, without ſaying, by the hands of the feme. F.N.B. 118 f.

Debt. Feme coverr. 4 If a man take a wife who is indebted to other perſons, the Baron and feme ſhall be ſued for this debt, living the feme, but if the feme die, the Baron ſhall not be charged therewith after the death of the feme; Howbeit if the Creditor of the Baron and feme recover the debt during the Coverture, which was due by the feme before the Coverture, then albeit the feme die, yet the Baron ſhall be charged to pay that debt after the death of the feme, by reaſon of that Recovery, &c. And all this becauſe during the coverture they are but one perſon in Law. F.N.B. 120. f.

Remitter. 5 If tenant in tail enfeoff a feme in fee, and die, and his iſſue within age takes the feme to wife, this is a remitter to the infant within age, and the feme hath nothing left in her, becauſe they are one perſon in Law: So likewiſe if the husband diſcontinue his wives land, and take back an eſtate to him and his wife, during the life of the husband, this is a remitter to the wife preſently, albeit the eſtate is not by the limitation to have continuance after the deceaſe of the husband, becauſe the husband and wife are one perſon, as aforeſaid. Littl. §. 665. Co. Inſt. pars 1. 350. b. 3.

Joint purchaſe 6 If a joint eſtate of land be made to Baron and feme and a third perſon, in this caſe the Baron and feme ſhall have but a moity, and the third perſon the other moity; ſo likewiſe if land be given to Baron and feme, and two others, the Baron and feme have but a third part; becauſe they are but one perſon in Law. Littl. §. 291. Co. ib. d. 187. a

Cui in vita. 7 If the Baron diſcontinue the land of the feme, and after take an eſtate to him and his wife, and a third perſon, for life or in fee; This is only a remitter to the feme for the moity, and for the other moity, after the death of her husband, ſhe ſhall have a Cui in vita. Littl. §. 676. Co. ibid. 356. b. 1.

Witneſs. 8 It was reſolved in the Common Bench, in P. 10 Iac. that a wife cannot be produced as a witneſs either againſt or for her husband, quia ſunt duæ animæ in carne una, and it might be a cauſe of implacable diſcord and diſſention between the husband and wife, and a mean of great inconvenience. Co. ibid. 6. b. 4.

Pardon for alienation. 9 Sir Robert Catlyn Chief Juſtice purchaſed lands holden of the Crown in Capite, to him and his wife, and the heirs of the ſaid Sir Robert, Dyer 196. 40. 3. Eliz.

Robert, and the Queen pardons him omnes tranſgreſſiones et offenſas, pro quacunque alienatione ſibi facta, without ſpeaking of his wife; yet this was a ſufficient diſcharge of the fine for the alienation to him and his wife; becauſe (as it ſeems) they were one perſon in Law.

Ho. 179. *Levendens* caſe. 10 An action of debt was brought againſt the husband and wife for the Recuſancy of the wife, and the husband would have appeared alone by Superſedeas; but the Court reſolved, that either both muſt appear, or both be outlawed; being one perſon in Law. Debt for Recuſancy.

209 The Wife is of the ſame Condition with her Husband.

Co. Inſt. pars 1. 16. b. 3. & Co. l. 4 118 b. 3. in *Actons* caſe, & Co. l. 6. 52. b. & 53. b. in the Counteſs of *Rulands* caſe. 1 Nobility may be granted for term of life, by act in Law, without any actual creation; As if a Duke take a wife, by the intermarriage ſhe is a Dutcheſs in Law, and ſo of a Marqueſs, an Earl, and the reſt, and in ſome other caſe; for that (in ſuch caſe) ſhe is of the ſame condition with her husband: Howbeit, there is a diverſity betwéen a woman that is noble by deſcent, and a woman that is Noble by mariage: for if a woman, that is noble by deſcent, marry a man that is under the degrée of Nobility, yet ſhe remaineth Noble ſtil; but if ſhe gain it by marriage, ſhe loſeth it, if ſhe marry under the degree of Nobility. and ſo is the Rule to be underſtood, Si mulier Nobilis nupſerit ignobili deſinit eſſe Nobilis; but if a Dutcheſs by mariage marreth a Baron of the Realm, ſhe remaineth a Dutcheſs, and loſeth not her name, becauſe her husband is Noble, & ſic de cæteris. Nobility.

Co. ibid. 30. b. 1. & Co. l. 4. 55. a. 3. in the Commonalty of Sadlers caſe. 2 If a man mary the Nief of the King by licenſe, and hath iſſue by her, and after lands deſcend to the Nief, and the husband enter, the Nief dieth, he ſhall be tenant by the Curteſie of this land, and the King upon any office found ſhall not evict it from him, becauſe by the marriage the Nief was enfranchiſed during the Coverture. But if a free woman marry a Villein of the King by licence, and lands deſcend to the Villein, the Villein dieth, the wife ſhall not be endowed, but upon an office found the King ſhall have the land, for the Villein remaineth ſtill a Villein to the King. Villeinage.

Co. ibid. 123. a. 1. Litl. §. 187. 3 If a Nief marry a freeman, by the Common Law of England the iſſue is free, becauſe in ſuch caſe during the Coverture ſhe is enfranchiſed, and (by conſequence) free; And therefore they being both free, the iſſue ought to have the ſame privilege: So likewiſe if a Villein marry a freewoman, the iſſues are Villeins, for the like reaſon, viz. becauſe during the coverture they are both Villeins. Villenage.

Co. ibid. 136. b. 1. 4 In caſe where a freeman marrieth a Nief, ſome have holden, that by this marriage the wife ſhall be free for ever, but the better opinion of our books is, that ſhe ſhall be privileged during the coverture only, unleſs the Lord himſelf marrieth his Nief, and then ſome hold, that ſhe ſhall be free for ever. Vide infra 9. Villein Nief.

Co. ibid. b. 2. 5 If a Nief be regardant to a Manor, and ſhe taketh a freeman to husband by licence of the Lord, and the Lord maketh a feoffment in fee of the Manor, the husband dyeth, the feoffee ſhall not have the Nief, but the feoffor; for that during the mariage ſhe was ſevered from the Manor; And ſo is the book of 29 Aſſ. (which is falſly printed) to be underſtood. Villein Nief.

Co. ibid. 6 If there be two Coperceners of a Villein, and one of them taketh him to husband, ſhe and her husband ſhall not have a Nuper obiit againſt her Copercener, but after the deceaſe of her husband ſhe may. Villeini

Petty treason. 7 By the Statute of 25 E. 3. it is declared, that if a servant kill his Master, it shall be adjudged Treason, viz. Petty treason, and in 19 H. 6. 47. (tit. Corone 7. & Br. Treason 8.) upon an Inditment one was arraigned for killing the wife of his Master, which he confessed, and thereupon it came into question, whether or no he should be drawn and hanged, or hanged only, and it was adjudged by the advice of all the Justices of both the Benches, that he should be drawn and hanged, for that it was treason; And there it is not taken within the equity of that Statute, which speaks only of killing the Master, but rather within the words thereof, because Master and Mistress import the same, being one person in Law. Pl. Co. 86. b. a. in *Partridges* case.

Amerciament. 8 If a feme covert be outragiously amerced, and thereupon the husband be distrained for it, he shall have the writ de Moderata misericordia to relieve himself from such outragious amerciament. F.N.B. 75. d.

Villein and Nief. 9 If a freeman marry a Nief, she shall be free for ever, albeit the Baron die, and she survive, and this the Law giveth her, as Britton saith, in favorem libertatis; and it seems reasonable that the Law should be so, because she and her husband are but one person in Law, and she ought to be of the same nature and condition in Law to all intents with her husband; Now therefore her husband being free to all intents without any condition in Law, or otherwise, and she being of the same nature and condition with her husband, if she be once clearly discharged of Villeinage to all intents, she cannot be Nief after without some special act done by her self, as divorce, or Conusance in a Court of Record; and this is in favour of Liberty. Vide Exod. cap. 21. & supra 4. F.N.B. 78. g.

A Lady of Honor. 10 A writ of partition was brought against the Duke of Suffolk and his wife, and others, per Radulphum Haward Armig. & Dominam Annam Powes uxor. ejus (for so she was named in the writ) and exception was taken upon the Misnomer, because she ought to have been named only by the name of her husband, and not otherwise. And by the opinion of Montague Ch. Justice, and Hales Justice, the exception was good, because by the Law of God she is sub potestate viri, and therefore her name of dignity ought to be changed according to the degree of her husband, notwithstanding the curtesie of the Ladies of Honor and the Court; whereupon the plaintiffs brought a new writ, ad respondendum Radulpho H. & Anna uxori suæ, nuper uxori Domini Powes defuncti. Dver 59. b. 51. 6 & 7 E. 6.

210 They cannot sue one another, nor make any grant one to the other, or the like.

Baron cannot grant to the feme. 1 A man may at this day by his deed covenant with others to stand seised to the use of his wife, or make a feoffment or other conveyance to the use of his wife; for now such an estate may be executed to such uses by the Statute of 27 H. 8. 10. because an use is but a trust and confidence, which by such a mean may be limited by the husband to the wife; so like wise in places where lands were devisable, the husbands (before that Statute) might by his testament devise his tenements to his wife in fee, for life, or years, because such devise tok not effect, until after the death of the devisor: Howbeit, at the Common Law a man could not by any conveyance, either in possession, reversion, or remainder, limit an estate to his wife; neither yet since the said Statute covenant with his wife to stand seised to her use, because (he and his wife being one person in Law) he can grant nothing to her, nor covenant with her. Co. Inst. pars 1. 112. a. 4. Littl. §. 168.

Co. ibid. 206. b. 3. 2 If a man be bound with a Condition to enfeoff his wife, the condition is void and against Law, because it is against a Maxim of Law, viz. that a man cannot make any grant to his wife; and yet the bond is good, but if he be bound to pay his wife money, that is good, Et sic de similibus. Bond.

Co. l. 4. 29. b. 3. in *Buntings* case. 3 Albeit he that is admitted to a Copphold estate is in by him, that made the surrender, yet a man may surrender to the use of his wife, because the Baron doth it not immediately to the wife, but by two means, viz. by surrender of the Baron to the Lord to the use of the wife, and by the admittance of the Lord according to the surrender; but if the estate did immediately pass from the husband to the wife, it could not be good. Copyhold.

Co. l. 8. 136. a. 2. in Sir *John Nedhams* case. 4 It was adjudged M. 30 & 31 Eliz. that, where in debt against a feme executrix, she pleaded fully administred, and it was found, that the defendant had taken the Obligor to husband, and that the husband was dead, this was no release in Law, neither yet the debt thereby extinct, but only suspended during the Coverture; for she could not (against a Maxim of Law) by taking him to husband make a release to him of the debt. Feme Executrix.

5 Hob. 10. Fryer against Gildridge.

211 Upon a joynt Purchase during the Coverture, either of them taketh the whole.

Co. Inst. pars 1. 55. b. 2. 1 If a man be seised of land in right of his wife, and soweth the ground and dieth, his executors shall have the Corn, and if his wife die before him, he himself shall have it: But if husband and wife be joyntenants of the land, and the husband sow the ground, and then the land surviveth to the wife; in this case, it is said, that she shall have the Corn. Vide 8 Ass. 21. 8 E. 3. 54. & Dyer 316. Emblement.

Co. ibid. 187. a. 4. 2 If a joynt estate of land be made to a man and a woman and their heirs before marriage, and after they intermarry; in this case, the husband and wife have moities between them: but if it be during the Coverture, they hold by intireties: For example, William Ocle and Joan his wife purchased lands to them two and their heirs, afterwards William Ocle was attainted of high treason for the murder of E. 2. and was executed, Joan his wife surviving him; E. 3. granted the lands to Stephen de Bitterly and his heirs, John Hawkins the heir of Ioan in a petition to the King discloseth this whole matter, and upon a Scire facias against the Patentee hath judgement to recover the lands, for that William and Ioan were one person in Law. Baron & feme hold by intireties.

Co. ibid. 187. b. 2. Vide Pl. Co. 58. b. 4. *Wimbish* and *Talbois*. 3 If a feoffment were made before the Statute of Wles (27 H. 8. 10.) to the use of a man and a woman and their heirs, and they intermarry, and then the Statute is made; In this case they hold by moities, for if the husband alien it is good for a moity, because the Statute executes the possession according to such quality, manner, form, and condition, as they had in the use, so as though it vest during the coverture, yet the Act of Parliament executes several moities in them, seeing they had several moities in the use: But it hath been said, if a reversion be granted to a man and a woman, and their heirs, and before attornment they intermarry, and then attornment is made, That in this case the husband and wife shall have no moities, no more than if a charter of feoffment be made to a man and a woman, with a letter of Attorney to make livery, they intermarry, and then livery is made secundum formam cartæ, in which case it is also said, that they have no moities. The like.

Co. ibid. 310. a 1. & Co. l. 2. 68. a. 1. in *Tookers* case, Pl. Co. 483. a, *Nich.* & *Nich.*

4 Before

Cui in vita. 4 Before the Statute of 32 H. 8. 28. if husband and wife were jointly seised to them and their heirs, of an estate made during the Coverture, and the husband alone (or together with his wife) had made a feoffment in fee, and died, the wife by the Common Law might have had a Cui in vita to recover the whole land, and after her death, her heir might also have had her Cui in vita; And since that Statute both she and her heir may enter after such discontinuance of the husband, without being put to their action. Co. ibid. 326. a. 2.

Discontinuance. 5 If the Baron discontinue the land of the feme, and after take an estate to him and his wife, and a third person for life or in fee; this is only a Remitter to the feme for a moity, and after the death of her husband she is put to her Cui in vita for the moity: But if such an estate be taken back to him and his wife only, she shall be remitted to all. Co. ibid. 356. b. 1.

Recovery. 6 Husband and wife are Jointenants for life, the remainder to the husband in tail, the Remainder to another in fee, the husband suffers a recovery; this is no barr to the issue for any part, because there are no moities betwixt Baron and feme, and therefore no lawfull tennant to the præcipe of the whole; And the estate in remainder depends upon the intire estate made to Baron and feme, &c. Co. l. 3. 5. a. 4. the Marq. of Winchesters case.

Real lien. 7 If sundry persons acknowledge a recognisance, it survives not, but the lands of them all shall be put in execution equally; so likewise if two be bound to warranty, the survivor and the heir of the other shall be vouched together: But if husband and wife, and the heirs of the wife be bound to warranty, and the wife dis, the land of the Baron may be only put in execution; because there are no moities betwixt Baron and feme, &c. Co. l. 3. 14. a. 4. in Sir William Herberts case.

The like. 8 If a feoffment be made to a man and a woman sole with warranty, they intermary, and then they are vouched, and recover in value; In this case, moities shall not be betwixt them, for albeit they were sole, when the warranty was made, yet when they recover and have execution, they are Baron and feme, and cannot take by moities. Pl. Co. 483. a. 1. Nich. and Nich.

212 The Husband is the Womans head; And therefore

Homage by Baron and feme. 1 The husband and wife doing homage for the wives land, the husband shall speak the words for them both, viz. We do you Homage, &c. And the homage, which the husband and wife do, is the very homage, which the wife should do alone for her own land; and in that case when he hath issue by his wife, he shall do the homage alone, during his wives life, because by having of issue he is tattied to an estate for term of his own life, in his own right, and yet is seised in fee also in the right of his wife; so as in such case he is not a bare tennant for life: Howbeit if his wife dis, then he hath only an estate for life, and (by consequence) cannot do homage: And what is said of doing homage, is also true of taking homage, in case where the husband is seised of a Seignory in right of his wife, for in such case also (before issue) the husband and wife shall take it together by holding the tenants hands in the hands of them both: But after issue he shall receive it alone, and after the wives death he shall not receive it; for (regularly) it is true, that he who cannot receive homage in respect of the weakness of his estate in the Seignory, shall not do homage, when he hath a like estate in the tenancy. In like manner, Protection. Obedience for the husband shall serve also for the wife. Litt. § 88, 89, 90. Co. Inst. pars 1. 66. a, 3. & 67. a. 2. Co. ibid. 130. b. 1.

Redisseisin. 2 If a recovery be had against a woman in an Assise of Novel disseisin, and the plaintif recovereth and hath execution, the woman taketh Co. ibid. 54 b. 1.

keth husband, and both of them redisseise the plaintiff, he shall not have Redisseisin, because the husband is now the womans head, and alius: But if a feme recover in an Assise, and after take Baron, and they are redisseised, the husband and wife shall have a redisseisin, because (as before) he is the womans head, and therefore joyneth for conformity, and doth it in the right of his wife, who was disseised before, so as (in effect) it is Idem disseisitus, & idem Conquerent. Vide Merton cap. 3. 20 H. 3.

Co. ibid. 354. a. 3. 3 If land be given to Baron and feme, and the heirs of their two bodies, and after the Baron alien the land in fee, and then take back an estate to himself for life; In this case the Baron shall not be remitted against his own alienation: But if he had taken back an estate to him and his wife for their lives, albeit they be but one person in Law, and no moities between them, yet for that the wife (the husband being her head) cannot be remitted in this case, unless the husband be remitted also: Therefore (in judgement of Law) both husband and wife shall in this case be remitted against the husbands own alienation. Remitter.

Co. l. 11. 77. b. 2. in *Magdalen* College case. 4 If an Appeal be brought against a feme covert, and she be acquit, she shall not have damages by the Statute of Westm. 2 cap. 12. because she is disabled by the Law to sue sole without her husband. Vide 22 E. 3. tit. Corone 276. Appeal. Feme covert.

Co. Inst. pars 1. 112. a. 4. 5 To cover in English is tegere in Latin, and is so called, for that the wife is sub potestate viri; and therefore is disabled to contract with any without the consent of her husband, who is her head. Covert.

213 All that she hath is her Husbands. *Vide Ho.* 216.

Co. Inst. pars 1. 112. a. 4. 1 Omnia, quæ sunt uxoris sunt ipsius viri, non habet uxor potestatem sui sed vir, Bracton, lib. 2. cap. 15. And again, Res licet sit propria uxoris, vir tamen ejus Custos, cum sit caput Mulieris. Bract. lib. 5. cap. 25. Nothing the wifes.

Co. ibid. 326. a. 4. 2 The husband is tenant in tail, the remainder to the wife in tail, the husband makes a feoffment in fee; In this case the husband by the Common Law did not only discontinue his own estate tail, but his wifes remainder also, because at the time of the feoffment he was seised of his wifes remainder in her right: Howbeit after the death of the husband without issue the wife may enter by the Statute of 32 H. 8. 28. Discontinuance.

Co. ibid. 351. a. 1. 3 If a man taketh to wife a woman seised in fee, he gaineth by the intermarriage an estate of freehold in her right, which estate is sufficient to work a remitter, and yet the estate, which the husband so gaineth, dependeth upon uncertainty, and consisteth in privity, for if the wife be attainted of felony, the Lord by escheat shall enter, and put out the husband; otherwise it is if the felony be committed after issue had: Also if the husband be attainted of felony, albeit the King thereby gaineth no freehold (for that remaineth still in the wife) yet the King shall have a pernary of the profits during the Coverture. Inheritance.

Co. ibid. a. 3. 4 If a man marry a woman possessed of a term for years: In this case the baron is also possessed thereof in her right, and hath power to dispose thereof by grant or demise, he may also forfeit it by Outlawry or Attainder, because they are gifts in Law. Chattel real.

Co. ibid. 5 Upon an Execution against the husband for his own debt, the Sheriff may sell the term: Howbeit, the husband cannot dispose thereof by will: Also if he make no disposition or forfeiture of it in his life, and The like.

& ſurvive the wife, he ſhall have it by gift in Law; but in ſuch caſe if the wife ſurvive him, ſhe ſhall have it again: There is the ſame Law likewiſe of eſtates by Statute Merchant, Statute Staple, Elegit, wardſhips, and other chattels real in poſſeſſion. Vide Hob. 3. Yong and Radford.

The like. 6 Chattels real en auter droit, or conſiſting meerly in action or uſe, the husband ſhall not have by the intermarriage; but Chattels real being of a mixt nature, viz. partly in poſſeſſion, and partly in action, which happen during the Coverture, the husband ſhall have by the intermarriage, if he ſurvive his wife, albeit he reduceth them not into poſſeſſion in her life-time; but if the wife ſurvive him, ſhe ſhall have them: As if the husband be ſeiſed of a rent-ſervice, charge, or ſeck, in the right of his wife, and the rent becomes due during the coverture, the wife dieth, the husband ſhall have the arrerages, but if the wife ſurvive him ſhe ſhall have them, and not the executors of the husband: So it is of an Advowſon, if the Church become void during the Coverture, he may have a Quare Impedit in his own name, as ſome hold, Vide 50 E. 3. 13. 28 H. 6. 9. 7 H. 7. 2. But the wife ſhall have it, if ſhe ſurvive him, and the husband, if he ſurvive her: Et ſic de ſimilibus: But if the arrerages had become due, or the Church had fallen void before the marriage; In ſuch caſe they were meerly in action before the marriage; And therefore the husband ſhould not have them by the Common Law, although he ſurvived her: And ſo it is likewiſe of Reliefs, mutatis mutandis: But now by the Statute of 32 H. 8. 37. if the husband ſurvive the wife, he ſhall have the arrerages as well incurred before the marriage, as after. Co. ibid. Co. ibid. b. 1.

Chattels perſonal. 7 Things in Action, as debts by obligation, contract, or otherwiſe, the husband ſhall not have, unleſs he and his wife recover them; But the marriage is an abſolute gift of all Chattels perſonal in poſſeſſion in her own right, whether the husband ſurvive the wife or no: ſo if an Eſtray happen within the Manor of the wife, and the husband die before ſeiſure, the wife ſhall have it; But after ſeiſure by the husband, the property veſteth immediatly in him, and if he die, his executors ſhall have it: Howbeit, as to perſonal goods there is a diverſity, between a property in perſonal goods (as is aforeſaid) and a bare poſſeſſion; for if perſonal goods be bailed to a feme, or if ſhe find goods, or if goods come to her hand as Executrix to a Bailiff, and then ſhe take a husband, this bare poſſeſſion is not given to the husband; yet in ſuch caſe the Action of detinue muſt be brought againſt husband and wife, as (regularly) in all other actions againſt the wife it ought to be. Co. ibid.

Confirmation. 8 If a man let land to two men, to hold the one moity to the one for life, and the other moity to the other for his life, and the Lord confirm the eſtate to them both in the land, to hold to them and to their heirs, they are tenants in common of the Inheritance; for regularly the confirmation ſhall enure according to the quality and nature of the eſtate, which it doth enlarge and increaſe: But if ſuch a leaſe for life be made to husband and wife by ſeveral moities, and the Lord confirm their eſtate in the land, to hold to them and their heirs, this confirmation as to the moity of the husband enureth only to the husband and his heirs, for the wife had nothing in that moity; but as to the moity of the wife, they are Jointenants, for the husband hath ſuch an eſtate in his wifes moity, in her right, as is capable of a Confirmation. Co. Inſt. pars 1. 299. b. 1.

Feme. Executor. 9 A feme covert cannot make an executor without the aſſent of her husband, and the adminiſtration of her goods of right appertains to her husband. Co. l. 4. 51. b. 2. *Andrew Ogaell.*

Replevin. 10 If the beaſts of a feme ſole be taken, and after ſhe takes a Baron, the Baron alone may ſue a Replevin, Trin. 33 E. 3. F.N.B. 69. k.

Obligation. 11 If a feme ſole be bound in an obligation, and take baron, and after F.N.B. 121. c.

after dies, the baron shall not be charged therewith, if recovery thereof were not had against him and his wife in the life of the wife; but if a man demise land to a feme for life, reserving rent, and she take baron, and after the rent is arrear, and then she dies; In this case the baron shall be charged by writ of debt for those arrearages, because he took the profit of the land by reason of his wife. Rent.

F. N. B. ibid. 12 If a man be bound by obligation to a feme, and she take baron, and the day of payment comes during the espousals, and after the feme dies, the baron shall not have an action of debt for this obligation, because it was a duty due to the feme, and a thing in action before the espousals; but if a feme be endowed of a rent, and after she take baron, and the rent is arrear, and then the feme dies; In this case, the Baron shall have a writ of debt for this rent, because it was a duty accrued unto him during the espousals. The like.

Co. Inst. pars 1. 46. b. 3. 13 If a lease be made to Baron and feme for term of their lives, the remainder to the executors of the survivor of them, the husband grants away this term and dieth, this shall not barr the wife; for that the wife had but a possibility, and no interest: But if a man be possessed of a term for forty years in right of his wife, and maketh a lease for 20 years, reserving a rent, and die, albeit the wife shall have the residue of the term, yet the Executors of the husband shall have the rent, for that it was not incident to the reversion, because the wife was not party to the lease: So if the husband had made a grant of the whole term, upon condition that the grantee should pay a sum of money to his executors, &c. and the husband hath died, and then upon breach of the condition the executors had entred; This had been a disposition of the whole term, and the wife had been barred thereof, because the whole Interest was in that case passed away by the husband: Also if husband and wife be ejected of a term in the right of his wife, and the husband bring an Ejectione firmæ in his own name, and have judgement to recover, this is an alteration of the term, and vesteth it in the husband: & sic de similibus. Lease.

214. Her will ought to become his will, and to be subject unto it.

Co. Inst. pars 1. 112. b. 1. 1. The husband may devise lands to his wife, because (as Littleton saith S. 168.) the devise take effect not till after the husbands death; Howbeit this reason holdeth not to make a devise of lands from the wife to the husband good; for if a Feme covert be seised of lands in fee, she cannot devise the same to her husband, because at the making of her will she had no power (being sub potestate viri) to devise the same, and the law intendeth, that it may be done by coercion of her husband. Devise.

Co. ibid. 132. b. 2. 2. A woman cannot be professed a Nun during the life of her husband: Howbeit in such case some do hold a difficulty, viz. that ante carnalem copulam, the husband or wife may enter into religion without any consent, but Post carnalem copulam neither of them can without the consent of the other. Profession.

Co. ibid. 310. b. 1. 3. If a Feme sole maketh a lease for life or years reserving a rent, and granteth the reversion in fee, and then taketh husband, this is a countermand of the Attornment; for that she had no such freedom of will, when her grant was to take perfection by attornment, as she had at the time of the grant made, her will now being subject to the will of her husband. Attornment.

Co. l. 2. 57. b. 4. in *Beckwiths* case. 4. If Baron and feme levy a fine of land, wherein they are seised in Declaration of Uses.

in right of the feme, and the baron only declare the uſe of the fine, this declaration of the uſe ſhall bind the feme, if her diſſent appear not, albeit her aſſent to the limitation of the uſes cannot appear; for when ſhe joyns with the baron in the fine, it ſhall be intended (if the contrary appear not) that ſhe joyned alſo with him in agreement in the declaration of the uſes of the fine.

Declaration of uſes.

5. If Baron and feme ſell the land of the feme to another for money by parol, and after levy a fine to the vendee and his heirs; this is good, and ſhall bind the feme without any writting proving her aſſent; A fortiori when the uſe is declared by the deed of the baron, and no other declared by the feme, it ſhall bind, vide 12 Eliz. 290. Dyer. Baron and feme were ſeiſed of a tenement in London to them and the heirs of the Baron, & the Baron covenanted by Indenture in conſideration of 20 l. that he and his wife ſhould ſuffer a recovery by writ of right according to the cuſtom of London (which binds as a fine at the Common-law) and that the recovery ſhould be to the uſe of the recoverors, untill they ſhould make a leaſe by Indenture for 40 years, and after the making of the leaſe, then to the uſe of the baron and feme and the heirs of the baron, and the recovery was had accordingly, and the opinion of all the Juſtices was, that the leaſe was good, and not diſſeiſible by the feme, who ſurvived the baron; And yet in this caſe the baron was only party to the deed that declared the uſe, nevertheleſſe it bound the feme, becauſe the feme is ſub poteſtate viri. And therefore albeit the feme be owner of the land, and the declaration or diſpoſition of the uſe inſues the ownerſhip of the land, ſicut umbra ſequitur corpus; yet in regard ſhe is ſub poteſtate viri, ſhe cannot in reſpect of her coverture without the barons conſent limit the uſe, no more than ſhe can make an executor without ſuch conſent. Co. l. 1. a. 24. *Beckwiths* caſe. Co. l. 4. 51. b. 2. *And. Ognels* caſe.

Deviſe.

6. A feme ſole deviſeth land to a man, and then takes him to huſband, and dies, this intermariage is a revocation of the deviſe, and the heirs of the feme ſhall have the land, and not the husband; becauſe after mariage the will of the feme in judgement of law is ſubject to the will of her husband, and (as it is commonly ſaid) a feme covert hath not any will; for the making of the will is but the inception thereof, and takes not effect untill the death of the deviſor: Omne Teſtamentum morte conſummatum eſt, and voluntas eſt ambulatoria uſque ad extremum vitæ exitum. Co. l. 4. 61. a. 3. &c. *Forſe* and *Hemblings* caſe.

Tenant at will.

7. If a feme ſole be leſſor or leſſee at will, and take husband, this determines not the will; becauſe after the mariage, the feme herſelf cannot countermand or determine the leaſe at will, no more than where ſhe and her husband make a leaſe at will reſerving rent during the coverture, or if a leaſe be made to them at will; for ſhe hath ſubmitted herſelf and all her will to her husband; And, ſo a feme covert may have a tenant at will, or be a tenant at will, and yet ſhe herſelf cannot countermand it, becauſe ſhe by her intermariage hath put her countermanding power in this caſe (which concerns not franktenement or Inheritance) into the mouth of her husband: ſo if baron and feme demiſe land at will, and the baron dies, this is no countermand of the will, but the leaſe continues ſtill. Co. l. 5. 10. a. 4. *Henſteads* caſe.

Security of the peace.

8. The will of the wife ought (by the law of England) to be ſubject to the will of her husband; that to make her obedient thereunto, the Common-law doth ſeem to allow him to give her lawfull and reaſonable chaſtiſement, For if the husband threaten to beat or kill his wife, ſhe may have a writ de ſecuritate pacis againſt him, but ſuch writ ſhall have this clauſe in it, Quod ipſe præf. A. bene & honeſtè tractabit & gubernabit, ac damnum & malum aliquod eidem B. de corpore ſuo aliter quàm ad virum ſuum ex cauſa regiminis & caſtigationis F. B. 81. f

nis uxoris ſuæ licitè & rationabiliter pertinet, non faciet nec fieri procurabit quoviſmodo, Compellatis, &c.

Pl. Co. 37. a. 2. in *Platts* caſe. 9. If the office of the warden of the Fleet (which is an office in fée) deſcend to a feme ſole, and ſhe marries one impriſoned there upon an execution, this ſhall be adjudged an eſcape in the feme, who is warden, and the Priſoner (albeit he be within the walls of the priſon) is thereby enlarged; for he cannot be lawfully impriſoned, but under a warden, and he cannot be under the guard of his wife; and therefore the law will adjudge him at large. Eſcape.

Co. Inſt. pars 1. 3. a. 1. 10. A feme covert cannot take any thing of the gift of her husband, but is of capacity to purchaſe of others without the conſent of her husband; Howbeit her husband may diſagree thereunto, and deveſt the whole eſtate; but if he neither agree nor diſagree, the purchaſe is good; Howbeit, after his death, albeit her husband agreed thereunto, yet ſhe may without any cauſe to be alleged waive the ſame, and ſo may her heirs alſo, if after the deceaſe of her husband ſhe herſelf agreed not thereunto. Purchaſe by a feme covert.

Dyer 271. 27 *Eliz.* 11. The baron is outlawed, and his feme waived, the feme comes in in ward by proceſs, and hath a charter of Pardon; In this caſe, ſhe ſhall be diſcharged of the Impriſonment, but the charter could not be allowed, becauſe ſhe could not have a Scire facias againſt the Plaintif without her husband, for that her will is ſubject unto his. Baron and feme outlawed.

FINIS.

THE TABLE.

A.

Abatement of Writ, 683. 695. Where diſſability abates it not, 38. Of a *Quare Impedit*, 90. 247. 557. Of a *Formedon*, for an omiſſion in pedegree, 597.

Abatement in Lands, where it is no bar, 564.

Abeyance, 633.

Abbot and Prior, 676. 732.

Abjuration, 342. 345. 391.

Ab initio, 486.

Acceptance, 169. 460, 461. Of a Rent, where it makes a Leaſe good, 40. 141. 458. Makes voidable Leaſes good; not ſo of void, 54. 103. Where a good bar, 59. 579. Of Rent, no Confirmation, 572. Of a Deed, makes Attornement good, 458. Of one thing in liew of another, 461. Bars Eſcheats, 470. Of counterfeit money, after receiving of it ſhall not give advantage to alter for the Condition broken.

Accerner, 771. Of eſtate, 194.

Accord, With ſatisfaction where a good Plea, 64.

Acceſſary, No Acceſſary without a Principall, 41. 713.

Actions, To be layed, where the cauſe ariſeth, 47. Where the ground of it failes, all is gone, 114. Intire, 252. Popular, 331. Reall and perſonall, 363. Where to be brought, 495.

Acts, The originall Act, where to be conſidered, 62. Done to a mans ſelfe, 169, 170, 171. Voluntary and Compulſary, 422. againſt common right, 548.

Actions upon the Caſe, 573. For words, 159. 678. 690. 703, 704. 734. 762. For Nuſances 95. 696. Lyes not for erecting a Dove-cote, 684. Upon abatement of goods loſt, or ſpoyled by negligence, 670.

Acts of Parliament, 331. Beſt expound themſelves. 249. Judges, to take notice of them, 299. Do no wrong, 580. Repugnant, void, 641. 644.

Account, 715. Againſt Guardian in Socoge, and when, 85. Not againſt the Executors of the Accountant, 155. 597. Muſt be grounded upon privity, 175. Of Merchants, 738.

Accuſation, None bound to accuſe himſelfe, 486.

Acquittance, 97. 464.

Advantages, Not taking of them, is an Inlet to Covin, 457.

Adminiſtrators and Adminiſtration, 456. Where they ſhall not ſue Execution, 83. In Law, 140. Ought to execute their office faithfully, 340. Of *bona Notabilia*, 218. Compoſition, ſhall not prejudice, 330.

Admeaſurement. Of Acres, how to be 482.

Advowſon, 251. 290. 610. Appendant, 143. After Partition remaines appendant, 228. Appendant to one Acre, 234. To the Demeſnes, 236.

Admiſſion, and Inſtitution, 709.

Age. 346. 347. By the civill Law, 348.

Agreement and *Diſagreement*, 454, 455.

Aide, 31. To deraigne the Warranty 40. Of the King, 307.

Allegiance, 134. 288. One may be borne in *England*, and yet not within the Kings Allegiance, 46. Is due to the naturall perſon, 88. An inſeperable incident, 136. Due by nature, 279. Is not locall, 287.

Alienations, by Tenant in tail where no bar, 72. By Tenant by the Curteſie no bar, 206. Of a Villaine purchaſor, 291.

Alien, 291. 345. May trade, 95. Not Inheritable, 160. In league, may be indicted, but not alien Enemy, 344. May have and maintaine Actions perſonal, may purchaſe to the uſe of the King.

Amendment, of a Record, 594.

Amercement, upon a Nonſuit, upon what Lands, 42. in Courts Baron, and Leet, 335. Of the Towne, for Manſlaughter, 588. Termed *Miſericordia*, 686 aſſerred, 725 The Country not amerced for not apprehending of Felons, for felonies in

the night, 488.
Annuity, 703. What, 155. Extinct by Eviction of the Land, 31. Not maintainable againſt the Heire by Preſcription 36. Where good by Preſcription 69. Good, and yet the Land evicted 576.
Annuall ſum not ſeverable 240.
Ann and *Jour.* 489 To bring Appeale to make claime 489.
Appeales 391. 768. Not by the Lord againſt his Villain 104. 500. By the Villain againſt the Lord 110. Of Mayhm 680. Malicious abhorred in Law 499.
Apportionment and Diviſion. Caſtles where dividable 91. Eſtovers, Advowſons, and things intire not apportionable 255. 445.
Approvement 208.
Apt words 606.
Appropriation 710. Diſappropriate 125.
Appendant and *Appurtenant* 284.
Arreſts 355. 424. The Bayly muſt ſhew his Warrant 700. Erronious 590.
Arbitrament and *Arbitrators* 456. 153 221. 379. 713. 749. Their power not irrevokable 379. A Plea to it revoked 138.
Attaint, lyes not before Execution 112. By the heire in Villainage 198. No new Evidence to be given in it 605. 711.
Attachment of a Debt in *London* 400.
Aſſets 149. 386. Found in any County 430.
Aſſets, by Diſcent.
Aſſumpſit 280. 600. Defeated 123.
Aſſignments 325. Of Dower 579.
Aſſignees in *Fait* and in *Law* 708. 451. May vouch 187.
Attainder, the right of the Heire not forfeited by it 188
Attorneys. The Leſſor Attorney to make Livery 60. 90. Cannot do more then his Maſter 66. So of Bayly *ibid.* Were not allowed by the common Law 152. To deliver Seiſin 336.
Aſſize, By Joynt-tenants and Tenants in Common 43. Of a Rent after a Diſſeiſin 143. By the Grantee of a Seigniory upon a Fine before Attornement 15. In *Conſimilio Comitatus* 225. Amounts to a claime 584.
Attornement 707. 710. 143. 155. 184. 255. 326, 377. Not compellable to a deſeiſible eſtate 33. 601. Where upon Alienations 32. Who ſhall attorne 33. Paramount a Condition 82. of a Feme Sole 180. Where it is needfull 13 601. To the particular Tenant, veſts all Remainders 183. Upon the grant of Rent, who ought to attorne 183, 184. By one Joynt-tenant good for both 185. 188. 256. Of an Enfant 690. One not to attorne without his Companion 699. Not for a time, or upon Condition 508. Void for uncertainty 625.
Audita Querela 123. 147. 605. By an Enfant to avoid a Statute, 672. To avoid a Statute made by dureſſe 50. Not after a releaſe 105. Nonſuit in it 335.
Averment, not againſt a Preſumption in Law 707. Negative Pleas not to be averred 110. Not of that, which appeareth 112. Where neceſſary, *& e contr.* 613.
Avowry 92. For a Rent ſervice upon the perſon 32. Where title is to be made 165 Made for a Rent, where it ſhall be a bar in Annuity 176. without Attornement 557. 593. Determination of Election 473.
Auditors. Of the Court of Wards granted to two, there ſhall be no Survivor 747.
Authority 733. 374. Created, by the parties, and by the Law differ 438. Revocable 243. 450.
Ancient Demeſne 147, 148. 276. 292. 369. 708.
Award 247. 679. 456.

B.

Baile 686. 714.
Bailement 380. 702. Of Goods 35. 375. Executors of the Bailee ſhall not take advantage of a Releaſe 5.
Bars 233. In diverſe reſpects 163. 479. Defective, yet the Plaintiff ſhall recover 243. 248. In perſonall, and reall Actions 360. In a Writ of Eſcheat 369. In a *Quare Impedit*, *& e contr.* 394. & 588. *e contr.* In Mayhm 695. Bar in an Action upon the Caſe is a bar in Debt 695.
Baron and *Feme* 141. 359. 571. Grant of the Husband without the wife, where not good 63. Eſtates to them is Joynt-tenancy 66. Husband, chargeth the Wives Lands 81. Wife can paſſe nothing, without Examination 317. Husband cannot grant to his Wife 765. Hold by Entierties 766.
Baſtard and *Mulier* 52. 200. 349. 723. 499, 500. Shall vouch 431. Takes by purchaſe 432. *Eſt nullius filius* 500.

Battaile, in an Appeale 455.
Bills, Of Revivor, not upon Revivor 678.
By-laws, where good 734.
Blood Corrupted, not inheritable 246.
Body, more worthy then Land 224.
Bonds taken by the Sheriff, where not, with the Statute of 23. of *H.* 6. 250. without date good 390.
Bootes, where the Leſſee may take them without Aſſignment 244.

C.

Capias pro fine 52. 711. Lay not at the Common Law for a Debt 354.
Carrier 410.
Caſtle-Gard 222.
Caſualties not deviſable 627.
Cauſe, the cauſe ceaſing the effect ſhal. ceaſe 29. 30
Charges upon Lands, where good, *& è contr.* 117, 118. Upon a Benefice, without the Patron 411. Where the perſon ſhall be charged, although diſcharged by a Proviſo 551.
Ceſtuy que uſe, his Leſſees eſtate determined 38.
Champerty 281.
Chattells, reall returne to the wife 82. Veſted 103. 137. What the Husband ſhall have 769.
Challenge 72. 114. 167. 292. 677. To the Array and Polls 277. 569. Peremptory 352. Cannot be of the four Knights of the Grand Aſſize 706. 481.
Charters, how to be conſtrued 65.
Chaplains 64. 76.
Certainty, where required 629, 630, 631, 632, 633.
Certificate, of the Biſhop 156. 291. Of an Accord, before a *Non omittas* 272. Not to be traverſed
Clergy 106. 357.
Claime 550. 553. 609. Where not needfull 601. How it muſt be made 43. in part, good in all 216. Feare of making continuall claime 353. 489. When, and where to be made 495. by the Lord of the Villains goods 361. Of Priviledge 366. the Heire Beyond-ſea, not barred by Non-claime 671. in Caſe of feare made as neer the Land as may be, good 487.
Circuit of *Action* 680.
Colluſion 693.
Collations 717, 718.
Common Recovery, common Aſſurances 742, 743, Where bars an eſtate taile, 45.
Common, Of Vicinage 34. 211. Appendant, due of common right 63. Apportionable 238. 548. *Ratione Comorantie* 269. 287. Without number 576, 577.
Commoners, by Vicinage, may encloſe one againſt another 699.
Compoſitions 330.
Conditions, precedent and ſubſequent 47. 64. Proviſo, is a word of Condition 53. 68. A Stranger may take advantage of it 53. Of a Mortgage muſt be performed 65. Where an eſtate ſhall ceaſe upon it 68. Paramount, a Diſcent 81. 83. 293. Of Encreaſer 293. Acceſſarie, to the eſtate 232. Runs with the Lands 255. Intire 259, 260. 485. Repugnant 639. *& è contr.* 645. ſubſequent, not to be averred, 646. Not pleadable without ſhewing the Deed 324. Words Conditionall in Leaſes 361 In Law, upon Truſt 375. Annexed to eſtates in Lands, and of a Recognizance differ 395. In the Diſjunctive 442. Apportioned by Act in Law 439. Where by Entry for a Condition, the party ſhall not be in his firſt eſtate 607. Impoſſible void 608. Unreaſonable 694. When to be performed preſently, when in convenient time 491, 492, 493. Reſtraines Liberty 483. Performance of them muſt be averred 485.
Concord 415.
Conjunction and *Copulative*, how to be taken 13, 14.
Confirmations, void, 74. 116. 160, 161. Of a Rent void, to enlarge his eſtate 59. 255. By the Patron and Ordinary 59. Workes not, without Privity 183. Joynt, to the Husband and Wife 362.
Conformity, Joynder in Actions and Fines for Conformity 438.
Contracts void 75. Import an Aſſumpſit 137.
Conſpiracy 171. Muſt be brought at leaſt againſt two 763. Lyeth not after a Pardon 35. Indicted, though yet nothing in Execution 700.
Contempts 152.
Colour of Entry 431. Not to be given where the Plea goes in bar of the right 602.
Conſent takes away Erro's 481.
Contribution 413. Where not compellable upon *Audita Querela* 36. Where the heir ſued ſhall not have it 199. 282.

Conſiderations 413, 414. Where blood is no good Conſideration, *& e contr.* 138. What is good, within 13 *Eliz. cap.* 5. 168. To raiſe Uſes 281
Continuall Claime 584
Conſtruction, Where one thing ſhall be taken within another 218 219.
Concealments 240. 302
Conſtitutions 735
Conveyances, out of the Statute of 32 *H.* 8. of Wills 717. By Livery, where a Forfeiture 370
Copyholds and *Copyholders* 727. 760. 217. No Fine due upon ſurrender or diſcent before Admittance 45. May lop Trees 47. Their eſtate confirmed by Cuſtome 58. Surrenders by Attorney, and good 68. In by the Surrender, not by the Lord 83. Severed by Cuſtome, ſo continue 133. 328. Grantable, by Executors 142. *Dominus pro tempore* 142. Grantable in fee, may be granted for life 216. Their Fines muſt be reaſonable 213. Surrenders, before admittance, good 327. In pleading may alledge an Admittance as a Grant. Copy-hold Cuſtomes 759. Extinct 463
Conveniency, things reſpected, by reaſon of their conveniency 428
Cornage 162
Corodies 228 254
Corporations 390. 708. 719. Failing, the Lands revert 29. Hold Lands, by Knights ſervice 36. Where granted, is diſſolved upon a Releaſe 52, 53. Tranſlated, enjoy their old Priviledges 154. Single and aggregate 150. Altered, yet the body remaines 354
Corruption of *Blood* 161
Coroners, their Inqueſt 244
Coſts 564
Covenants, joynt and ſeverall 89. What bind betwixt Leſſor and Leſſee 133. Incident to the Lands, and came with it 135. Implyed and expreſſed 157. Have ſpeciall relation 167
Covin apparent, need not be ſhewed 603. Hinders a Remitter 612. Not preſumed, unleſſe averred 725
Cui in vita 765
Cuſtome Concealed 14. Of goods loſt by Tempeſt, not recoverable 591
Cuſtomes, bindes ſtrangers 145. Of Burrough Engliſh 148. 244. 313. To have a Fine for marrying the Daughter 352
Counts, made good, by the Bar and Replication 249. Muſt containe certainty and verity 605. abated by miſ-recitall 470
Courts Baron 135. By Commiſſion cannot ſit in Terme where the Kings Bench is 223. Remedy for ſpirituall things in temporall Courts 234 Of Record onely have power to impriſon 367

D.

Dayes, in Court, and pleadable 7
Damages ſeverall, amongſt Parcenors 237. When they ſhall be layed in the Count 597. And increaſed, *& e contr.* 502. Double Writs of Enquiry of them 696
Darriane Preſentment 331. 341. 382.
Demand, of a Rent, when to be made 489, 490, 491, 492, 493. 495. 474. Of the purchaſe of a Villaine 495
Deeds muſt be avoided by Deeds 71, 72. In whoſe cuſtody to remaine 127. In Caſes of neceſſity may be proved without ſhewing them 425. Made void by raſure, &c. 590. Fraudulent void 613, 614, 615. 691. Not to be pleaded, *without* ſhewing 706
Death, Not traverſable 603
Delivery, Of Goods by the Banckrupt not good 207
Degrees, Of worthineſſe of the Lands 269
Demiſe of the King, no change by it 145
Demiſe of goods 151
Debt, for rent after a Surrender 144. Extinct 154. 172. Againſt Executors 157. 161. 288. Againſt the Heire 556
Denial 596
Deraigument purgeth Profeſſion 73
Deprivation 289
Detinne, by the heir of Deeds 691. For Charters, 136. Of Charters where no Plea 195
Deviſe 715. 770. One equall part of Capite Land to diſcend 209. For Executors to ſell 221. Of the third part 327. Of a Reverſion ſold by Executors 336. Shall make a Fee-ſimple by Conſtruction in Law 709
Demand, the forme of it in a Writ 17. Of rent, muſt be upon the Land, and when 52. 245. 460. 490. Not to be by the King 295
Demurrer 296
Devaſtavit 754 756
Dignity, forfeited for Treaſon 138. Reſtrained to an eſtate for life 156. Reſpected for conveniency 428
Diſcent 293. 311, 312. When privity of blood faileth 32. Where ſhall take away Entry

Entry, *Et e contra*, 32, 134, 609. To Daughters, and not Parcenors, 51. In *ſtirpes, & in capita* 61. By Entry into Region 62. Where not good againſt the King, 62. One out of the Realm not barred by a diſcent, 216. Takes away Entry, 577, 591, 683, 716. Of the Baſtard eigne where it ſhall bar the Mulier 493

Diſcontinuance, 20, 56, 57, 325, 368, 270, Removed the Iſſue may enter, 33. Defeated upon a ſurrender, 33. Of an Eſtate tail 44. 55. Once defeated, all that depends upon it is gone, 117. Where a Bar, *Et e contra*, 185. Of the Lands by the husband, 218. By enfeoffing the Donor and a ſtranger, 256. The reaſon of it, 697

Diſcontinuance of Suit 557

Diſpenſations 160. To take two livings, 22, 101

Diſſeiſin 696. Not of a Rent without Attornment 217. Not of a Rent-charge or Seck but at Election 462. In time of warr takes not away Entry 488

Diſſeiſor and *Diſſeiſee* 235. May be no Tenant of the Land 563

Diſfranchiſement 107

Diſceit 147 596

Diſclaimer 364. 368. Where it ſhall bind, *& e contr.* 55. In the blood 459

Diſability 343. 570. To make a Surrender 602

Diſtreſſe, for Damage feaſant muſt be upon the Land 31. Of the Lord out of his fee, when 42. Of the Lord *Paramount* without attornement 82. No Diſtreſſe is irreplevifible 168. For owelty of Partition 237. In the night 418 Not for certainty in Leet 549. For more rent then is due, where juſtifiable 468, 469. In another County 428

Diviſion, of Lands, in Hotch pot 205. Of the Teſtators goods 205

Divine ſervice, by Preſcription 683

Divorce, 593. *Cauſa frigiditatis* 714. Sentence in caſe of Divorce repeated after the death of the parties 498

Donative, Charges donative, may be made Preſentative 462

Double Pleas 625

Dower, where it lyeth againſt the Guardian *& e contr.* 35. Of a woman at nine yeares of age 37. *Ex aſſenſu Patris*, where not good 73. 622. *Dos non de dote* 79 According to the improved value 79. of Copyhold 91. 556. Where not of the Rent, but of the Land 125 Of intire things 207. *Ad oſtium Eccleſiæ* 220. 622. Of Caſtles where, *& e contr.* 729. Of the *plus beate parte* 730. Of Rent to be delivered by the Sheriff 429

Dutchy of *Cornewall* 720

Drunkard 570

E.

Eccleſiaſticall perſons cannot prejudice their Church, 4. Cannot diſclaim, 4. May reſigne to the King, 220.

Eccleſiaſticall Courts, may take Recognizance of a debt, 239. Where Temporall Courts are to take notice of their Juriſdiction, 599.

Eccleſiaſticall Lawes, What are in force, 7. Founded by the Common Law 71.

Ejectione firmæ, 141. 727. Of what it lyeth not, 18. Not within the Statute of 32 *H.*8. of Titles 92. By the Leſſee of a Copy-holder 545 566

Eſtates, Deſeiable, 122. Upon accruer, 122. Particular and Remainder one Eſtate 187. Voidable evicted by Guardian and Biſhop, 192. In taile cannot drown, 201 Two Eſtates made together of one Land, 207. Once void remedileſſe, 395. Executed and Executory, 396. Altered and charged 433

Election, 159. 473, 474, 475, 477. Of a Writ of Annuity or Diſtreſſe, 473. Loſt by doing wrong, 565. By Coparcenors, 478. To Corporations, 753. Of the Knights of the Parliament, 550. Of the Heir and the Lord, 475. Of things in grant, 475. Of Entry and Actions, 476

Enfranchiſement, 356, 459. For a time, 161

Enfant, May attorne 48. Shall do his Services, *ibid.* Where, ſhall not have his Age, 48. Cannot be Guardian, 104, Where his plea ſhall demurr for Enfancy, 315. Shall not account, 319. Their Acts upon Record not voidable, 369. Married before yeares of conſent, 402. Compellable to attorne 415

Entry congeable 40 44

Entry, Taken away by Corruption of blood, 37 Revived, 38. Is not good, where is no Intereſt 55. Taken from the Iſſue in taile, 57 After Entry, the party Treſpaſſor *Ab initio*, 108. Given to the King without demand, 275. When may be for non-payment of Rent without demand, *Et e contra*, 496. By a ſtranger, deveſts not an eſtate 485

Encroachment of Rent, avoided in Avowry: or by *Nuper obijt* 477

Emblements 85, 466, 587. 730, 442, 583.
Equity, What it is, 202. Upon certaine ſtatutes, 204, 295, 210, 211, 212, 213.
Error, Not after a Releaſe, 105, In Court, 124. By him in the Reverſion, or Remainder 132. In Law, not reverſable in the ſame Court 170. By the Vouchee 197. Who may have Error 198. 548. Not upon Diſclaimer 198. 647. No Writ, before the Judgement be compleated 347. 274. 545. 693. In fact, and in Law 682. In *London* 701. Upon a Plaint in Inferiour Courts 709
Eſcheat 294
Eſcape 36. 95. 572. 585. 685. 772. 645. By marriage of the Keeper 36. Againſt a Gouler 561
Eſtrepement 700. In what caſe it lyeth 682
Eſtovers 135 194
Eſtoppell 186. 565. The heire where not eſtopped 573. No Eſtoppell, to alledge the truth which appeareth on Record 604
Executors, where they ſhall not recover Arrearages but loſe them 66, 67. May releaſe before Probate 125. Chargeable, without naming of them 166. Not chargeable where the Teſtator might wage his Law 590. Of his owne wrong 466
Execution 400. Where againſt the Kings Debtor, *& e contr.* 40. Of the Land onely, which the party had at the time of the Judgement 42. Where returnable, *& e contr.* 93. What Execution was at the common Law upon a Recognizance 214. 218. Cannot be of the profits of an Office in Truſt 236. Diſcharged by purchaſe of parcell of the Land 240. Sheriff may breake open doores to do it 290. Where not againſt an heire Enfant 350. Valuable, or without ſatisfaction 350. No protection after it 394. Of the body not valuable 587. Priſoners are in Execution till delivered over to the new Sheriff 699. Of Proceſſe 699
Excomengment 688. Where a good Plea to abate a Writ, *& e contr.* 38. Where it ſhall diſable, *& e contr.* 170
Exchange. Imports Warranty and Covenant 137, Not equall void, 242. Intire, being a condition in Law, 259. Not executed void, 393
Exigent, 122
Extent 480
Expoſition of words, 13, 18, 96, 217, 705, Conſtruction of them muſt referr to the next Antecedent, 15. *In forma predicta*, 15. Of Sentences and words 21 23
Exception 165
Extinguiſhment, Taile extinct in a fee ſimple 223. Of a Rent charge, barrs an annuity, 434
Ex gravi querela, to whom granted 550

F.

Faile, Of Action, 75. Of the Record, 620
Falſifier of Recovery, Not by Tenant in taile in Remainder 67
False Latine 19. Shall not quaſh a Count, nor a judiciall Writ 21
Fealty 129, 581. Incident though not named, 134
Fee ſimple, Without words Heirs 409, paſſeth out of the King without Office 421
Fees, Barons and Knights Fees, 203
Feoffments, To uſes, 148. To the uſe of his Will, the uſe is in the Feoffor 53
Conditionall 285. Makes not extinguiſhment of Rent, 482. Not to an Alien, 618. By Deed, not deveſted by words 699
Feme covert 562. After coverture, a Writ againe, 31. diſabled to bring Actions, 551
Felony, 50, 420
Felo de ſe, Shall not forfeit to the King a debt upon a ſimple Contract 694
Fines levied of Lands, 93, 214, 400. Void, 74, 75, 400 Cannot operate double, 96 Barr an intaile, 154, 188, 330, For yeares within the Statute of 11 *H.* 7. 209 Levyed by Covin ſhall not bar, 586. 613. Reverſed 715
Fines upon copy-hold Eſtates, 434. Exceſſive or unreaſonable, no Forfeiture to deny them, 685
Fine, In a Leet to be diſtinct and not joynt, 49, 334 557. For an unjuſt vexation, 681. For diſturbance in a Court of Record 741
Forejudger, 371
Folly, where attributed to the party, and ſo bind them 466 667
Forfeiture, of marriage, not paid after Knighthood 34. Of a Dignity entailed 93 Not without ſome overt act done 108. Of an office for waſte 214 For ſaying Maſſe 245. By Attornement upon Record 366
Forcible Entry 91
Foundation, of a Colledge, where void 76

Formedon

Formedon 41 599
Frankalmoigne 410 720
Frank-marriage, Hotchpot 31. 62. Who ſhall have the Land, after a Divorce 52. Out of uſe 158
Fraſtions, in Conditions, eſtates 256 257
Franchiſes, ſhall not dye 64 65
Fraude 613 614 615
Fraudulent Grants 747

G.

Garniſhment 123
Gavelkind 148
Goales 133
Guardian, the body of the Ward ſevered from the Land, the Lord ſhall have the benefit of the two years 30. In Socage cannot preſent to a Benefice 104. Accountable 142 576. In Socage 235. 351. 371. Of what diſcharged upon his Account 583. Muſt account of the marryage of the heir 665
Goods, too high appriſed to be delivered, the Appriſors 215
Grand Serjeancy 150 687
Grants of the *King* 206. Grants to the King reſtrained by generall words of Statutes 26. Of an office, and after of a Rent for the exerciſe of it, the office determined 41. Made upon falſe ſuggeſtions of the parties, are void 302. 616. 457. Conſtrued for his honor, and the releife of the Subjects 741
Grants, of an eſtate of Free-hold in *future* void 24. Not to be expounded againſt the expreſſe Letter 25. Of a Villaine for years, not good without Deed 42. Of a Reverſion not good without Attornment 67. Of Monopolie, void 68. Of a Rent, where void 74. Of the office of Auditor 77. Of a Surveyorſhip 77. To a Colledge, where void 77. Of Glebe Lands, void, to Children before birth, void 78. Made upon good grounds, *& è contr.* 128. of Services, *Quid operatur* 129 of the next avoydance 160. 164. 245. 579. of a Seigniory 169. of Pawnage 241. of copyholds 252. In *pais*, not good, without Attornment 366. Joynt, where they enure ſeverally 608, 609. By Eccleſiaſticall perſons 762. Where good, without Attornment 455. Made *Concurrentibus his*, how they operate 484
Guiſts, to Husband and Wife, how to be taken 62. *Cauſa Matrimonii prolocuti* 275

H.

Habendum, and Premiſſes, their difference 100
Heire, a mans heir remaines in him during his life 241
Hereſie 8
Heriot ſervice, and *cuſtome* 254
Homage, by Husband and Wife 767. Anceſtrell, gone after Alienation 30. 410. May be ſeperated, and twice done 113. Perſonall 150 Extinct 173. Anceſtrell implyes Acquitaile 607.
Hotchpot 305 600
Hoſpitalls 407
Hue and *Cry* 588
Hundred, not chargeable to a Felony done in a mans houſe 668

I.

Idiots, examined in Chancery 123
Impriſonment 320 356 743
Indictments, Not void by Nicity, or Curioſity 26. 27. Good though not purſued in the Circumſtances 386. Where, the wound muſt be left out, *& è contr.* 602. Fraudulent 620. *Autrefoits acquit*, where a good Plea 501
Incidents 131. Incident ſervices not diſcharged without ſpeciall words 131. Fish and Doves to the Free-hold 226. To a Deed 321. To Corporations 135. Inſeperable 135. A Judgement diſtroyes a Bond 222
Intire things 262, 263, 264, 265, 266. 498. Intire Inheritances 720. Multiplyed 467
Indentures, ſubſequent, declare uſes of a precedent Recovery 468
Inventions, new, are dangerous 756
Incloſures 563. Diſſeiſin of a Rent 742
Inheritances, ſhall not depend, upon uncertaine words 107
Iudicavit, where it lyeth, *& è contr.* 178. 179
Infidells, accounted Enemies in Law 10
Interpretation of the Statute of 11 *H.* 8. Of the Statute of 32 *H.* 8. *cap.* 2. Of Charters, as the Law was when they were firſt made 158.
Joyntures, void 75. Before marriage no bar of dower by the Common Law 414. Made in liew of Dower 464
Joynder in Action 600 430
Joynt tenants charge 164. May grant their moyeties

moyeties 57. 59 of a right, of differing natures 162. May prejudice one another 363
Iſſue, where not inheritable 343
Iſſues, of Jurors levyed upon the Feoffee 42
Journeys Accounts 121 588
Judgements, in the Grand Aſſize 677. where defeated 122, 123. Payable, before debts 350. Upon dead men 561. Drowne Obligations 681. Finall 6. 77
Jurisdiction of Courts 139. Prohibited 139
Juſtices of the *Benches* 219. Muſt ſurceaſe upon the Kings Certificate 38. Where they ought to give Judgment, *ex officio* 703. Where righteous Judgment 507
Juris Utrum 161

K.

King, his command againſt the Law not to be obeyed 8. 103. Shall have the Purchaſes of Aliens 38. Shall not finde Pledges 106. Not deceived in making Leaſes 219. No Minor 224. his Debts ſhall firſt be paid 228. His Grants favourably interpreted 295. 299. His Prerogatives 296, 297, 298, 299. 305. Acts to him done, muſt be fully compleated 301. Where not barred by Acts of Parliament 303. Cannot be Joynt-tenant with another 305. abſolute, before his Coronation 389. Hath property of Felons goods waived 670
Knights-ſervice 91 738

L.

Law, Common Law preferred before the Statute Law, 341. Favoureth Right, 542. Where it excuſeth 609. Appropriats to it ſelf *vocabula artis* to expreſſe it ſelf by 632. Penall not taken by Equity, 686. hateth Vice, 499. Countenanceth things done in peace, more then in Warr, 437, 488.
Lacheſſe, ſhall not prejudice an Enfant, 6 Of Entry, ſhall bar the party, 666. 667
Leaſes, 74. 695 393. With condition to take the profits, 11. The Commencement of them 7. Where exception in them is void, 11, 13. *Durante viduitate*, 67. By Tenant in taile, good only for his life, 67. 162. When to begin. 76. Where ſhall enure by grant or confirmation, 102. where voidable, 121. To one and his Heires at will, void 242. Of a houſe with Implements *Quid operatur*, 227. Void for incertainty, 616. Drowned as to one, hath continuance as to another, 324. For yeares not capable of a Warranty, 362. By Tenant in Taile 442. By Deanes an Chapters, 715. Under the Exchequer Seale good 743
Legacies, not grantable over 95
Lees 549
Livery and Seiſin, 728. Of an Eſtate in *futuro*, void, 73. By Attorney, 96. Upon condition 99. void 113. To one, enures to both 166. Of what it muſt be made 226. Within the view 393. 418. Where of part not good 565. Not to be made, nor taken without a Deed. 623
Livery and *ouſter le Maine* 37 203
Libells 744
Limitation of Uſes 707
Licences, not revocable 381. To alien where good 394. To ſell Wines 157 418
Lord and *Villaine*, manumiſſion of the Villaine 50
London, dangerous to be populous 735

M.

Maintenance, Where juſtifiable 432
Manumiſſion 393
Marriage, of Preiſts 73. Due to the Lord 102 An abſolute gift of Chattells to the Husband 199
Mannor, by the word Mannor, a Reverſion paſſeth 218. What things it draws to it 228 229
Magis Dignum 226 348 349
Market-overt 702. In *London* 716
Merchants 561
Manſlaughter, the diverſity in it 211
Marſhalſey, none to ſue there but thoſe of the Kings Houſhold 276. Office of it not grantable for yeares 757
Menalty 327
Miſnomer 391. 556. Shall not make void a Grant, or a Preſentment 21 27
Miſpriſion, of Clarkes where not amendable *& e contr.* 250 385 592
Miſcontinuance of Suit 723
Monopolies 728 748 756 140 302.
Monks 337
Mortgage 251. Where upon it, the money is to be paid to Executors, where to the heire 43
Monſtrans of deeds, 196. 395. 598. 457
Modo & forma, not words of ſubſtance 381. 382
Mortmaine 309
Murder 747. An Act may be murder, though not intended 48, 50. All are Principle in it 50. Intentions adjudged Murder 501

N.

Naturaliſation 284
Ne Exeat regnum 742
Neceſſity, in what Caſes it excuſeth 425, 426. Writs in what Courts to be ſued in caſe of neceſſity 427. A Deed not ſhewed

ed, where it may be good in Evidence in case of neceſſity 458
Neiſe 356
Nobility 764. Gotten by marriage, loſt by marriage 71
Non-claime 316
Non-Reſidency, good excuſes of it 610
Nonage 74
Non Compos Mentis 43. 367. Shall not loſe his life for Felony 355
Non Obſtante 310
Non eſt factum 158 591
Nonſuit, in a *Quare Impedit* peremptory, in Attaint peremptory, 394 604 497
Notice, where a man ſhall not forfeit his eſtate upon a Condition broken, without notice 593. 596. Things done in one County, taken notice of by them in another County, *v contr.* 595
Nuſances 96. 154. 289. 602. For publick and private, how the Actions ſhall be 683. Abated 700

O.

Oath of Allegeance 741
Obligations, joynt and ſeverall 88. Severall, upon one Parchment 320, 321. Made Beyond-ſea 381. Payable before Statutes 621. With Conditions to enſeoff 460. To performe an Accord 468. Releaſed by making the Obligor Executor 468. Where not to be cancelled after Judgement 716
Office found 694. Not to be quaſhed but by Petition or matter of Record 70
Offices, of truſt, not traverſable 89. 153. Of Clarke of the Sheriff 133. Of Exigenter of *London* 137. Of the Marſhall perſonall 152, 153. 377. Of ſhall 153. Of Filizer 153. Of Auditor of the Court of Wards 264. Of the Kings Tennis playes 273. In the King without ſuing a *Scire facias* 301. Of Clarke of the County 334. Judiciall, not grantable in Reverſion 701. Granted to perſons unskilfull or incapable, void, 729. Where they cannot be leaſed for yeares 553
Ordinary, where he cannot diſpoſe of the goods 160. 340. The Inteſtates goods committed to him, 300
Order in Writs 271. In pleadings 275
Oyer and *Terminer*, cannot ſit where the Kings Bench is, in Terme time 223. For Nuſances 702
Outlawry, where it gives a Forfeiture of Land, *& v contr.* 50, 51. Upon an Indictment reverſed by Error 71. Outlaw, *habet Caput Lupinum* 341. Where beyond the ſea reverſible, 553, muſt be pleaded, *Sub pede ſigilli* 674

P.

Panell void 76
Pardon 164. 252. before Judgement, diſcharges an annuity, 31. Cannot pardon damages or coſts before Judgement for Alienations 765
Payment no plea without acquittance, 72 place of payment of a Rent, 166
Parceners, Where they ſhall have the Rent joyntly, where in common, 37, 42, 43. Shall have aide, to deraign the warranty, 38. ſhall joyne in Aſſiſe 43. So of Deodands, 46. Where the Judgement ſhall be to hold in ſeveralty, 65. The propriety of one, not gone by alienation in reſpect of privity, 175. Cannot make ſeverance of eſtate of inheritance in the Lands 608
Patron and patronage, ſhall not charge the Glebe 73
Partition 746. 149. 200. 209. 369. Not avoided for inequality 437. Where made, not to be impeached 174. Avoided by Eviction 175. Makes no Diſcontinuance 438. Egality of it 552 460
Particeps Criminis 163
Peace and *War* 298
Parſon and *Vicar*, his ability 4. Not to be removed, after inſtitution 4. Ought to be reſident 6. Their Alienation, no Diſcontinuance 339
Peeres and *Peereage*, not to be ſworne on Juries 740. Tryall of them 741. In Coparcenory 267 268
Piracy 547
Plaints, in Copy-hold Courts 132
Pleadings, and *Pleas* 456. Guardian may plead, without ſhewing a Deed 445. Of *Non eſt factum*, or Judgement if Action 101. Truth and Certainty muſt be in them 604. dilatory 644. In bar to a common intent good 710. Not to be holden in the night 488
Plenarty 291, 294
Pluralities 21, 787
Perquiſites 159 Shal accrue to executors 236
Perpetuities, 711 753 737 void 243, 688.
Poſt nati & Antenati 158. Not noble, without creation 46
Poſſeſſion fratris 141
Poſſibility 401. 406. may be forfeited. 405. remote is never intended in Law 620 621
Poſt fines 268
Preſcription, where inſufficient 17. Extinct by interruption 32. Felons goods not forfeitable by preſcription 45. Where ſaved 72.

In a water course 144. Of Estovers, 144 quashed by a record or writing, 222. for Felons goods, not good 235. To repaire Sea Bancks 671. for tithes, 698. where void 478. Repugnant void 644
Presentation and nomination 717 771 89 145 147. 469 By Symmony, 73 By laps 294 their difference 559
Precipe in capite 331
Priviledge of Bailee of goods detained 34 of Tenant by the curtesie lost 125. Lost by purchase 126. Of impeachment of waste gone by altering the Estate 197. Of a person in one Court not allowed where another Court is seised of the plea 471 of the Clergy 5. of Tenant by the curtesie 61
Priority and posteriority 160 307
Privity of blood & title 178 179. of contract 190 of estate & contract, 190 favoured in Law, 172 173 destroyed, the action is gone 173. Homage extinct for want of privity 173 In blood and estate 177 193. between the Ancestor and the Heir, the Testator and Executor 176 177
Procedendo 675
Prohibition 681 682 Of Waste not against Tenant in dower 125. against waste 213. upon a suit for Orphans goods in the spiritual Court 681 To the spirituall Court for examining a thing triable at Common Law 487
Prober of Revocation annulled by Feoffment or Release 69
Protection 307 688 702 *Quia moratur in Walliam* 35 Repealed by *Inotescimus* 41 72 By whom must he disallowed 68 Cast for the vouchee 174 by whom it may be cast 595 Incertain void 623 In what cases not allowable 673 in what actions not 673 674 not for the demandant 688 *quia profecturus, quia moraturus.* 732 not for above a year 489
Profession 576 makes no discent 571 dischargeth wardship 576
Proof 597
Proviso where it makes a condition 13
Proximity of Estates respected 272
Purchase of a Feme Covert not good without the assent of her husband 772
Principal & accessory 231 232 233 234 241

Q

Quare Impedit, 141, 172, 329, 341, 681, 467, 451. Causes of refusall of a Clarke. 45. Not without alledging a presentment 717
Quare non admisit, Out of what Court, 234
Quare incumbravit, 682
Queen, Is a person exempt from the King, and may grant, or take 732
Quit Rents 157
Quid juris clamat, 427
Quod ei deforceat 34. Whereupon a Recovery had upon default in Wast, *Et e contra* 44. For Tenant in Dower and the Curtesie, 273
Quo minus 599
Quo warranto 713

R

Rationabile parte bonorum, 477
Ravishment of Gard, 335. The guardian shall have it 103
Rebutter, 191. 687. 763. Without privity, 187
Recovery, By default. 19. 316. Where it is no Discontinuance, 19. In value. 51. 413. Feined, 118. Not avoidable by error 417. Bind, being by consent of parties, 481
Recognizance 151
Records, removall of them 351
Reception, 681. 501
Recusancie 245
Redisseisin 682
Refusall Of goods in *pais*, 455. Of the Clarke, 591
Reparation of Sea bancks, 671. 592. Felling of Timber for Reparation 733
Retraces, 33, 58, 105. 215, 286, 181, 183. Of Actions, 480 By Executors before probate, 507. Excuseth Execution. 32. Of a Remainder of a Terme, 49. Before an Interest void, 56. To disseisors how it enures, 57. To the Baile not good, 58. Of a Cousee of a Seat to sell his right in the Land, yet he may sue Execution, 59 By the Donor to the discontinuee of Tenant in Taile, 60. To Lessee for yeares, where void, 73. For a time, good for ever 115. To privies, where good, 180. Before Entry, where void, 181. To Tenant at Will and sufferance, the difference, 181. without privity is void, Of a writ of Error 187. of all demands, 217. Of a future Interest, where void, 242. In fact and in Law, 440. Of a Right 450. To one Disseisor, 563
Relation, 165, 167, 326. Protection and Subjection relate from the birth, 165 Of offices and fees, 165. of damages and wrong 166. Of processe, 166
Remainder, 705. Where good, where void, 15 117. 128. 608. Of a Rent, void, 55. 219. of a Terme, not grantable, 59 good when the particular Estate failes, 99. Must vest during the particular estate, 119. To a mans right heir, a limitation to himselfe,

128 Upon an Eſtate taile not valuable, 417. againſt his own alienation, 554
Remitter, 84. 159, 311, 313, 314, 705, 667 668, 763, 768. Of the wife is the Remitter of the husband, 508. Of an Infant, where not 67. avoyds a Rent, 74. Right with action, no Remitter, 79. The reaſon of, becauſe no perſon againſt whom to bring a Writ, 169. 485. Suſpended by warranty and aſſets, 412. Favoured in Law 506
Releiſe, Services not doubled for it, 254. remedy for it, 550. Paid by no Enfant, 575
Reverſion ſeperated for yeares, good, without attornment 365
Reſervation of Rent not exchanged by altering Names 20
Rents 24, 325. Extinct by feoffment 55. 119, 161, 253, Deviſable, *& e contr.* 60, 166. Apportioned 130. 253, 289. 569. 435. Incident to the Reverſion 130, 131, 132, A ſumm reſerved to a ſtranger, no Rent, 242. Charge, becomes Seek, 253, 254. Extinct by Recovery and purchaſe of part 254, 322, 548. Not to go out of things incorporeall, 286. Suſpended in aſſ, 322. paid by the Leſſee, no prejudice to the Tenant of the Land, 328. In *eſſe* after a Releaſe, 329. By encroachment, 373. Service made ſeck, 464. May paſſe without Deed 437. When to be demanded 490
Replevin 334. 391. For cattell not diſtrained 560. A plaint muſt be entred before the writ can be good 689
Reſiſtance muſt be by ſome over act, and not by word, 107
Reſignation 603
Reſcous, where lawfull 73
Retraxit 151
Revocation 151. Shall be ſtrictly taken, 379. The power of it, 192. 298 377
Right cannot be transferred, 69 196. ancient not barred 82. Left after a Recovery, 143. Of poſſeſſion, drawes right of property, 225. followes the poſſeſſion 227. may be forfeited 237. preferred before the poſſeſſion, 372. where extinct, *Et e contr.* 440. cannot incorporate with wrong, 567. favourably expounded 502. cannot dye, 504. Preſent, or future, may be barred 485
Robbery 110
Return, The Court cannot proceed upon a Falſe returne 272

S.

Sales, not good upon the Lords day, 8. by the Sheriff 707
Scandal. magnatum 87
Seiſin 668. payment of Rent by a Termor is no ſeiſin, 58. 287. 363. 548. 593. Preſentment of the grantee a good ſeiſin for the grantor in a *Quare Impedit*, 191. not traverſable, 287. of a Rent by the Feoffor 421
Scire facias 160, 613, 690. When ſhall iſſue out, when not, followes the Record, 229
Seales 743
Seizure of a villaine 162
Seigniory 263. ſuſpended 361. 443.
Sheriffs 244. muſt take notice who are in Execution, 420. Where they may break up a houſe to deliver Execution or Seiſin, 678
Sewers, 685, 49
Socage lands deviſeable 35
Subſidies uncertain made certain by circumſtances 407
Surrenders 235 603. By Attorney 152 after a grant of a rent 164 intire 260 in Law, 472 447 450
Suſpence, Seigniory ſuſpended, not grantable 56 perſonall things once ſuſpended, ever gone 154
Statutes what binde the King, 13. ſubſequent expounded by equity of former 23 220 Interpretation of them, 24 142. Of 32 *H.* 8, of pretenced rights 326 388 That abridge liberty, how taken 355 taken by intendment 501
Stewardſhip 309
Services Intire 262 263 Divine 285
Summons and ſeverance 337 574

T.

Tail, what things may be intailed 358 Void for incertainty 405 docked by recovery, value 414
Tales 507
Terme not extinct by purchaſe of the Fee, 335 not drowned, 339
Tempus ſem. how to be accounted 12
Tender Of marriage 91 687 of amends 259 of mony to a ſtranger, 290 Upon a mortgage 375 Excuſed 570. of Livery by the heire 610. Tender and refuſall 470. for the Redemption of a mortgage by the Guardian 497. For an ideot, 497. by a ſtranger where ſaves a forfeiture 485. of the demy marke 677. Of the debt in Court, 689
Tenant by the curteſie 41 581
Tenant in tail 313 550 cannot grant any remainder of his eſtate 57 barred by a common Recovery, and how not 130 131

Tenant

Tenant in Frankalmoigne, 149. cannot diſclaime 104 is not to be diſtrained for Arreares 106
Tenant Right 214
Tenants in common 244. ſhall joyn in Aſſiſe 545 where joyne, where ſever in actions, 611
Tenant in tail after poſſibility, &c. 450
Tenant for anothers life 578
Tenant at ſufferance 453
Tenures, *In capite*, 61. 142. In ſocage, 97 136. not extinct by purchaſe of part of the Land 507
Treaſon 110
Treaſure, none can diſpoſe of the Kings treaſure without licence 303 304
Trade, what it is, 139
Traverſe, not without an office found 72. the place not to be traverſed in perſonall actions, 382. Traverſe upon a traverſe 618
Treſpaſs 268. for oppreſſion in the Common 387
Trees 231
Tryall in a forrain county 224 of villainage 351. of a Peer in *Ireland*, 497. *Per medietatem linguæ* 472
Trover brought by a Lunatick 427
Truſts, where they ſhal go to executors, 187

V.

Variance, betweene the originall and judgment 637. in circumſtances no prejudice, 384 Between the writ and the count, 636 637
Valore Maritagii 716
Verdict, intire 261 in criminall cauſes not privy 353 where at large 604 708. incertain is inſufficient, 624. 631. 632. 648. where voided by acts done by the Jurors, 697 *Et e contr.*
Villain 37 292 337 765 764. may ſue his Lord 282 by Confeſſion 419 may give his goods before ſeiſure 666
View of the vouchee 92
Voyage royall 61
Voucher 92 449 of the heir and the younger Son 110 475. Of the aſſignee 169 in dower 194
Uſurpation, 310 318 upon an Infant 444.
Unity of poſſeſſion, doth not extinguiſh partition 150
Uſes 349. Revoked 72 of a recovery after it is ſuffered, declared 109 regarded, as Eſtates 202 ſuperſtitious, draw good uſes, 231 good and charitable to be preferred, 740 741 752. introduced inconveniencies 748 Declaration of them 771 good, and ſuperſtitious, how they ſhall operate, 628.

W.

Wager of Law, 429. 644. 697. 714. 716, 419. Not by a priſoner for meat and drink, 669. Where not in account, and where in debt upon a Bond 51. Not by an Infant 94
Wardſhips 700. 713. the husband after the death of his wife guardian ſhall looſe it, 37. The ſecond ward ſhall not ſue Livery, 37. Revived 40. No Wardſhip becauſe the tenure begins in the Sons, 61, of an uſe 111. Where, though not dying ſeiſed, 142. Not during the Fathers life 277 278
Way 377
Warrants 366
Waiver of goods, To whom the goods belong, 501. 502
Warranty 238. 314. 326. No bar, *& e contra*, 20, 256 340. Collaterall and Lineall 39. 163. 283 402. 648. Which commenceth by diſſeiſin 45. 63. 144. 187. 250. 564. 617. 619. The Heire not bound to warranty, where the Anceſtor was not, 57. Makes a diſcontinuance, 99. Extinct 118. May increaſe upon an Eſtate granted, 119 Determined 124. What words imply it, 124. void 124. Without the word (Heires) 187. Implyed in Exchange, and partition 191. For life only, 206. Followes the Land, 250. Intire 256. 262. Deraignment of it, 555. Annexed to incorporeall things, 411. With Aſſets bindes the King, 411. Expreſſe and implyed, 447. By Huſband and wife, 555. Continues after Partition, 577
Warrantia Chartæ. 157. 469. 719. Not after a Recovery in value 410
Waſte, 37. 141. 143. 334. 574 465 700. 728. 729. 750 751. 582. By him in the remainder maintainable where, 39. *Et e contra*, In Cole mines not opened 67. 573. Againſt Tenant in Dower, and by the curteſie 188. Againſt the Guardian 575. Succeſſor not charged with it 451.
Women, Not ſworne in Leets 318.
Wilbern am 560
Wills, Void 74. Of an Infant when 85. Repugnant void 243. Revoked by marriage 465
Witneſſes 453
Writings in parchment or in paper 393
Words, In Grants needleſſe 245. Of inferiour Ranck exclude them of higher, 270. Conſtrued in the milder ſenſe, 704. Generall, Imply no certainty; 635 636
Writs, Of Cuſtomes and ſervices, 18 317. not to be changed without Act of Parliament, 68. *De ſecunda ſuperoneratione*, 273. Of Right of Advowſon, 294. Of Meſne, 371. 380. 445. Of Entry upon an Adrowſon, 421. Of Diſceit 560. To the Biſhop 112. *Adverſaria & amicabilia*, and their difference, 482 Where to be brought, 496
Wreck 489.

FINIS.